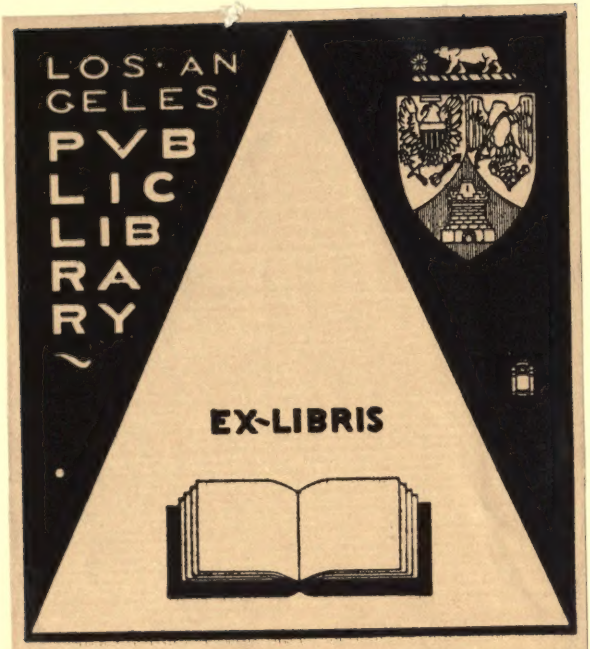

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STATE OF NEW YORK

MESSAGES FROM THE GOVERNORS

COMPRISING

Executive Communications to the Legislature and Other Papers Relating to Legislation from the Organization of the First Colonial Assembly in 1683 to and Including the Year 1906

WITH NOTES

EDITED BY CHARLES Z. LINCOLN

PUBLISHED BY AUTHORITY OF THE STATE

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VOLUME IV

1843-1856

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PREFACE.

178134
MAR 8 1910

The administrations of Governors Bouck, Wright, Young, Fish, Hunt, Clark and the first administration of Governor Seymour are included in this volume. It covers important discussions relating to the proper policy of the State on the subjects of taxation and finance expressed in part by the act of 1842, as noted in the preceding volume, but which discussion was continued resulting in the financial policies established by the third Constitution which was adopted in 1846. The anti-rent troubles again required serious attention, resulting in important constitutional and statutory changes relative to estates and interests in land.

The enlargement of the Erie canal, which had been directed in 1835, was prosecuted during the entire period covered by this volume, and was not completed until 1862. The difficulties of canal administration under the Constitution of 1846 produced the canal certificate act of 1851, which was declared unconstitutional, and which resulted in the canal amendment of 1854.

This volume also contains much history relative to the agitation concerning temperance and prohibition which was general throughout the country, and which in this State resulted in the passage in 1854 of an act to suppress intemperance, which was vetoed by Governor Seymour, and which agitation also resulted in the election of Governor Clark in 1854 as a temperance candidate, and the passage of the prohibitory act of 1855, which was declared unconstitutional. This volume also covers the Mexican War, the annexation of Texas and other territory in the southwest, and describes the continued agitation relating to slavery.

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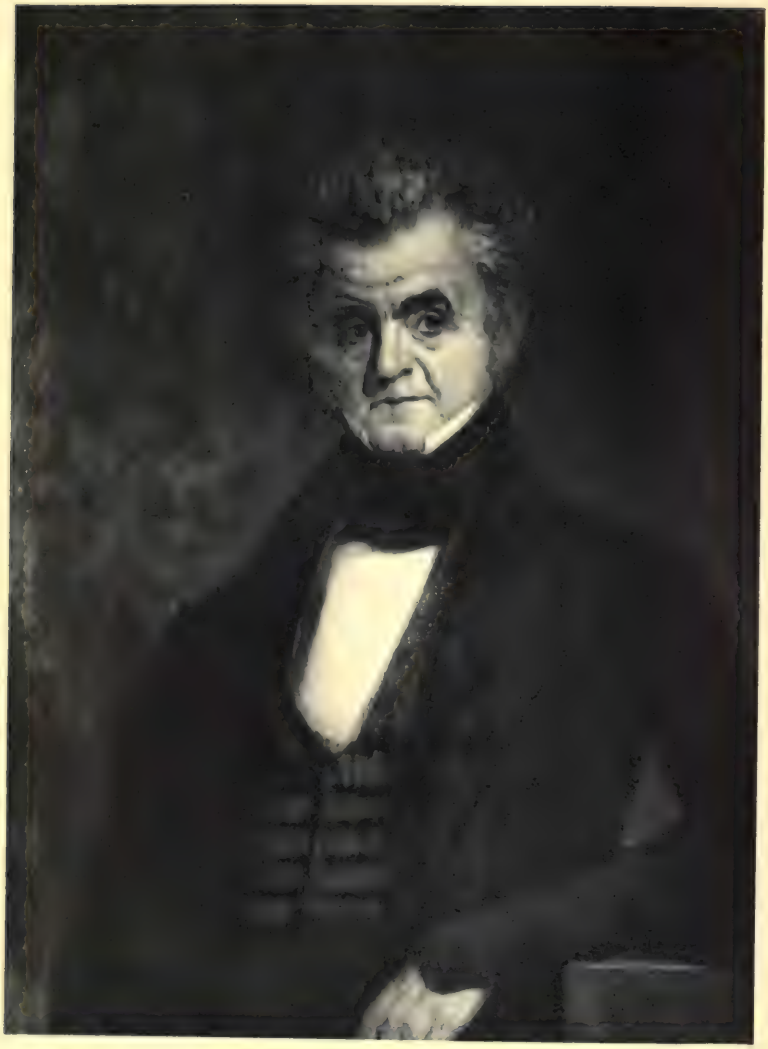

Wm. C. Bouck

MESSAGES FROM THE GOVERNOR.

1843. JANUARY 3. LEGISLATURE, SIXTY-SIXTH SESSION.

WILLIAM C. BOUCK, Governor.

ANNUAL MESSAGE.

FELLOW CITIZENS.—The Constitution makes it the duty of the Governor to communicate by message to the Legislature at every session, the condition of the State; and recommend such matters as he shall judge expedient, and take care that the laws are faithfully executed.

I have entered upon the discharge of the responsible duties of the Executive Department of the government with a proper regard, as I trust, for the important obligations imposed upon me.

For the first time since the organization of the government, the Chief Magistrate has been selected from the agricultural portion of the community. Whatever distrust I may feel in taking upon myself an untried station of so much importance and difficulty, I repose with confidence on the guidance of the Almighty; on the co-operation of every department of the government, and on the indulgence of a generous people, who are always ready to overlook unintentional errors.

To you, as the immediate representatives of the people, belongs the duty of making ample provision to enforce a strict compliance with the constitution and laws; to simplify, expedite, and cheapen all the proceedings of the courts of law and equity; to place every department of the Government under a rigid accountability, upon principles of economy; to see that the public faith is sacredly maintained, and the credit of the State kept unimpaired; to

lessen as far as practicable the burthens of taxation in all its ramifications; to give the greatest possible efficiency to our system of internal improvement, having reference to principles of public utility, and a careful regard for the interest of every portion of the State; to facilitate the use of the roads and canals already constructed; to see that our penitentiary system answers the great ends of preventing crimes, and punishing and reclaiming offenders against the laws upon principles of humanity; to see that all our charitable and benevolent institutions of a public character are made to accomplish the objects for which they were designed; to see that the banking institutions are placed upon a basis that will enable them with an honest administration of their affairs to command public confidence and subserve the legitimate objects of their creation; to give the utmost efficiency to the several departments of education; to protect and promote the interests of the agricultural, mechanical and laboring portions of the community; to restrain corporate bodies from all abuses of power; to take care of the public health, and to maintain the elective franchise in its purity.

As Americans, we occupy the rare and proud position of having established the practicability of free government. The Constitution has undergone the test of more than half a century, and although our popular elections have on several occasions been conducted under circumstances of high excitement and personal acrimony, yet the prevailing party, with a single exception in a sister State, has been permitted to administer the government without molestation. It must, however, be admitted that party strife is sometimes carried to an excess highly prejudicial to the interests of the people. Differences of opinion under a republican government in relation to measures of public policy will necessarily exist, and when discussed in a spirit of liberality and candor will exert a salutary influence. If I do not very much mistake the feelings of the people, they desire repose

from high party excitements, and exemption from those frequent changes in public measures that affect the business relations of the country; and I indulge the confident hope that the Legislature will co-operate with me in acting upon the principle of placing the public welfare above all mere party considerations.

During the past year, the earth has been uncommonly fruitful, and at no former period has there been so large a surplus of agricultural productions. Our country, and particularly this State, has been signally exempt from those ravages of disease with which we are sometimes afflicted. Peace prevails on all our borders, and several questions which threatened for a while to disturb our foreign relations have been adjusted in a spirit of conciliation. For these blessings, and our distinguished privileges as a people, we should bow in gratitude and humiliation to that Almighty power that controls the Universe.

Were it not for the great excesses previous to 1837, when agriculture was neglected, when extravagance and an inordinate desire for wealth prevailed, and the whole nation was deluded by a fictitious prosperity, the people would now be comparatively happy in the full enjoyment of ease and plenty.

Although the country is in possession of an uncommon surplus of the products of labor, yet business is depressed, and the people are embarrassed in all their moneyed transactions. This should doubtless be charged to the fact that fictitious prices and an inordinate desire for wealth have led to the contracting of debts which the products of the country at the present low prices do not furnish the means of paying. But I am confident that this state of things is gradually undergoing a salutary change. The people doubtless see the necessity of more economy in all their affairs, and the evil consequences of a system of credit altogether too much extended. I am also confident that they will not again be so easily misled by the fallacy of artificial means

to make them prosperous; and that they have become convinced that substantial wealth can only be derived from productive labor. There is no nation so highly favored as the people of the United States, and if they properly improve the advantages they possess, time will show that in point of greatness they are, as yet, in their infancy.

There have been repeated instances in the history of the administration of the Federal Government where powers of legislation have been assumed derogatory to State rights. While the States should yield a ready obedience to the rightful authority of the Federal Government, they cannot be too watchful of their sovereignty, and no encroachment should be permitted to pass unnoticed.

Within the last two years, there have, in my judgment, been several unwarrantable assumptions of power on the part of the Federal Government. The right to collect money from the people in any form, for the purpose of distributing the same among the States, has not been delegated to the General Government. So long as the whole revenue of the United States is required for the purpose of carrying on the operations of the government, it matters not what particular moneys are taken from the treasury for the purpose of distribution. Whether it be the proceeds of the sales of the public lands, or the same amount of money collected from imposts, or by direct taxation; it is nothing less than collecting money from the people, for the purpose of returning a portion of it to them in another form. And as it must come back diminished in amount by the expenses and losses incident to the collection and redistribution, the project is highly objectionable when viewed as a mere question of finance. But as an assumption of power which the States have not delegated to the General Government, it is of dangerous tendency, and like all other encroachments of power, ought to be promptly met and firmly resisted. The Union can only be maintained, and our free institutions transmitted unimpaired to posterity, by upholding the sover-

eignty of the States, in all the rights which they have not yielded to the Federal Government.

Under a power to "make or alter" regulations in relation to the times, places and manner of holding elections for representatives in Congress,[a] the present Congress has passed a law, which, in effect, requires the several States to legislate in a particular manner, in relation to the choice of representatives. However unlimited may be the power of the National Legislature to "alter" the extinguishing regulations of the States, or to "make" those which are entirely new, it is impossible, upon any fair construction, to maintain that the power to "make or alter," includes the power to act upon the State Legislatures, and compel them to make any particular law on the subject. As a question of mere expediency, this measure was not called for. No State has ever omitted to make the necessary regulations for the choice of representatives in Congress. But as an unauthorized exercise of power, it was, like all other encroachments by the General Government, highly dangerous to the stability of the Union.

The constitution of the Federal Government confers upon Congress the power to pass "uniform laws on the subject of bankruptcy throughout the United States."[b] The meaning of a bankrupt law was well understood at the time the Constitution was adopted. It was a law which enabled the creditor to seize on the property of an insolvent debtor, and cause it to be distributed among all the creditors. It differed essentially from an insolvent law, which provides for the discharge of the debtor on his own application for that purpose. Under color of the authority to pass a bankrupt law, the present Congress has assumed the authority of passing an insolvent law, and have provided that the debtor, on his own application and without the consent of his creditors, may obtain a discharge from all his debts. And this

[a] U. S. Const. art. 1, § 4, clause 1.
[b] U. S. Const. art. 1, § 8, clause 4.

law was not made prospective in its operation, but acted directly upon existing contracts. There is in my judgment no power in Congress to annul contracts which have been entered into between the citizens of this State.* The law is not only demoralizing in its tendency, but it rests on the assumption of a power which has not been delegated to the Federal government.

It cannot be denied that there has always been a class of men in the United States who have been disposed to give to the government a strong tendency towards consolidation. While I would not impugn their motives, I cannot withhold the expression of my deliberate opinion that they labor under a great and dangerous error. Nothing can be gained to the Federal Government by exercising powers which have not been plainly delegated to it. On the contrary, I am firmly persuaded that nothing short of the complete sovereignty of the States in all matters where they have not clearly surrendered their rights to the General Government, can give strength and stability to the Union, and secure in perpetuity the blessings which we so richly enjoy. And as I love the Union, I would firmly resist every usurpation of power on the part of the National Government.

While we are thus careful to watch and defend our own rights, we are bound honestly and faithfully to discharge our obligations to the General Government, and to the several States with whom we are associated. By the compact under which the Union exists, the States have made themselves a name among the nations of the earth; they have reared a bulwark for the defence of free institutions, and secured to the people advantages of the highest value, which could not have been maintained by separate, and perhaps rival States. As we cherish the Union, we ought carefully to abstain from all encroachment upon the legitimate powers of the Federal Government, and scrupulously fulfill our

* U. S. Const. art. 1, § 10.

obligations to the other States. So long as we remain in, and reap the advantages of, the Union, we are bound by every consideration of honor and good faith to yield to others what we demand for ourselves, an honest fulfillment of the compact by which for many purposes we are made one people.

I have been led to this course of remark from the tendency which has been noticed to strengthen the national arm at the expense of the several States, and from finding upon our statute books laws which have been adjudged to stand in conflict with our obligations to the other States. I allude to our laws relating to "persons held to service or labor" in other States, who escape into this. The Federal Constitution has provided that they shall not "in consequence of any law or regulation" of the State to which they may escape, "be discharged from such service or labor; but shall be delivered up upon claim of the party to whom such service or labor may be due."[c] In 1793 Congress passed a law prescribing the manner in which the surrender should be made, and forbidding all persons under a heavy penalty from interfering with the claimant. Our laws have thrown many obstacles in the way of the claimant in the assertion of his right. The principle upon which these laws are based has been pronounced unconstitutional by our own Supreme Court, and by the Supreme Court of the United States. That high tribunal made a decision at its last January term, which goes the whole length of declaring our laws repugnant to the Constitution, and consequently void. After the question has been thus settled in the mode prescribed by the Constitution, I submit whether these laws ought any longer to have a place upon the statute book. It does not become us as a member of the confederacy to hold a language to our sister States which they may deem offensive,

[c] U. S. Const. art. 4, § 2, clause 3.

and which the common arbiter between us has declared to be repugnant to the national compact.[1]

I will not discuss the question of slavery. The abstract right to hold any man in bondage is a question upon which in this State there is no diversity of opinion. We have happily relieved ourselves from the evil of slavery. But we have no right to interfere with that institution as it exists in other States. We have virtually agreed that it shall not be done, and until we are prepared to break up the national compact, and take the hazard of a civil war, our obligations to the other States should be faithfully discharged.

The Federal Constitution has also provided, that a "person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime."[d] At the last session of the Legislature, a concurrent resolution was adopted by the two houses, declaring "that in the opinion of this Legislature, stealing a slave within the jurisdiction and against the laws of Virginia, is a crime within the meaning of the second section of the fourth article of the Constitution of the United States." I deem it proper to say that this resolution fully accords with my own judgment. Although such an act may not be forbidden by our laws, the stealing of a slave has been declared to be a crime in other States; and if a transgressor of their criminal laws

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[1] See Jack v. Martin, 12 Wend. 312, 14 Wend. 507, holding unconstitutional the provisions of the Revised Statutes, 2 R. S. 560, §§ 6–19, which among other things authorized the writ of *de homine replegiando* in cases of a fugitive from service; see L. 1840, chapter 225, giving the right of trial by jury in cases of fugutive slaves. The subject was considered in several messages by Governor Seward. See Prigg v. Pennsylvania (1842), 16 Peters 539.

[d] U. S. Const. art 4, § 2, clause 2.

flee within our jurisdiction, we are bound by compact not to screen him. The Constitution declares that he shall "be delivered up."

In stating thus frankly the opinions which I entertain upon this delicate and important subject, I am aware that I may incur the censure of some, whose good opinion I should be glad to preserve. But I repose with confidence upon the great body of the people, who, I am persuaded, are not so blinded by passion or prejudice, that they cannot look upon the subject with candor; and who, whatever may be their private opinions, will not attribute my course to any other motive, than a sincere desire to preserve the Union, and perpetuate the blessings of a free government, by a scrupulous discharge of the obligations of good faith towards our sister States.

I recommend to your careful and attentive consideration the subject of internal improvements by roads and canals, which are eminently calculated to aid the enterprise, and promote the welfare of the people. There are few subjects in which our citizens feel a deeper interest, or that are more intimately connected with the character and prosperity of the State. But in making this suggestion, I must not be understood as recommending extravagant expenditures, or ill-advised undertakings. The system should have for its object the general welfare, and as far as may be practicable, should be based on an equal distribution of the means of the State for such purposes.

A public debt is under all circumstances objectionable, and should never be incurred except upon the most weighty considerations. And in every instance where a debt is authorized, adequate means and resources should be provided to pay the interest, and the power to liquidate the debt should be placed beyond the reach of contingency. As long as this rule is observed, the credit of the State will be preserved, and the public faith maintained. Expenditures for roads and canals should not be based on revenue to be de-

rived from indiscriminate taxation. Such a system I regard as liable to very serious objections. Few if any public works can now be undertaken and constructed, that are not local in their advantages. A tax imposed directly upon the people, for such an object, would operate unequally, and be contrary to the genius of our government, which recognizes no such principle. In all our legislation, we cannot too frequently recur to those first principles which lie at the foundation of our institutions, the adherence to which constitutes our surest hope for their stability.

This State has constructed and put in operation about seven hundred miles of canal, and have in progress the enlargement of the Erie, the construction of the Black River and Genesee Valley canals, the improvement of the Oneida river, and has purchased the Oneida Lake canal. In addition to this, the State has loaned its credit to the following incorporated companies:

Delaware & Hudson Canal Company	$800,000
New York & Erie Railroad Company	3,000,000
Ithaca & Owego Railroad Company	315,700
Catskill & Canajoharie Railroad Company	200,000
Auburn & Syracuse Railroad Company	200,000
Auburn & Rochester Railroad Company	200,000
Hudson & Berkshire Railroad Company	150,000
Tonawanda Railroad Company	100,000
Long Island Railroad Company	100,000
Schenectady & Troy Railroad Company	100,000
Tioga Coal, Iron Mining and Manufacturing Company	70,000
	$5,235,700

The New York and Erie, the Ithaca and Owego, and the Catskill and Canajoharie railroad companies have failed to pay the interest on their loans from the State, and the two latter roads have been sold at auction, and the sale of the former is postponed until the first Tuesday in May next.

The New York and Erie Railroad Company has completed forty-five miles of its road from the Hudson River to Goshen, in Orange county. Between this point and Binghamton, there has comparatively but little work been done. From the latter place to Lake Erie, almost the entire line of the road is under contract, and it is understood that upon portions of it a large amount of labor has been expended. The company suspended operations upon their works under contract last spring, and remain largely indebted to contractors, laborers, farmers, mechanics and merchants. It is, I think, very much to be regretted that the company did not confine its expenditures to sections of the road and between points promising the largest accommodation by its use. The act of 1836 authorizing a loan of $3,000,000 to this company, would seem to have contemplated advances as sections of the road were completed. If the company had adopted this policy, a portion of the large sum which has been expended between Binghamton and Lake Erie, would have been rendered available.

The line of this road extends through an interesting portion of the State, and a large body of our citizens feel a lively interest in its completion. The subject is entitled, and I commend it, to your careful examination.

It is understood that the stockholders of this company have placed in power almost an entire new board of directors, most of whom reside along the line of the road, and naturally feel deeply interested in its completion. It is, perhaps, to be regretted that the people of the southern tier of counties did not from the beginnning keep this whole matter under their own control and direction. They had a deep interest in the judicious and economical expenditure of the means at the disposal of the company, and in such a direction of all its affairs as would have drawn to their aid and support public confidence.

It is to be hoped that the friends of this improvement will see in the exhibit of our financial condition, that there

are no means that would justify new engagements on the part of the State.

I recommend a farther suspension of the sale of this road, and the enactment of a law yielding the prior lien of the State mortgage to such incumbrances as may hereafter be created by the company for the purpose of completing the road, or sections of it. The lien of the State mortgage should not be discharged until the Canal Board shall certify that the entire road, or such parts of it as may be designated in the act, shall be completed in a substantial manner and ready for use. To enable the Canal Board to act understandingly, they should be authorized to appoint an agent at the expense of the company to examine the work as it progresses. If this recommendation should meet the approbation of the Legislature, it is hoped that the company will feel encouraged to resume and complete this great work.[2]

The Catskill and Canajoharie Railroad Company have in operation twenty-six and a half miles of road. If about eleven miles were added to this distance, which it is estimated can be constructed for about the sum of $110,000, the road would be extended to the Vly Summit, a few miles from the rich valley of the Schoharie Creek. I cannot but hope that this entire road, from Catskill to Canajoharie, will eventually be completed.

In granting acts of incorporation for the construction of roads or other purposes, the Legislature should reserve such a control over the whole operations of the company, as will ensure to the public the benefits proposed to be realized.

The public work which has been put under contract, and is now suspended in an unfinished state, consists principally

2 By chapter 200, passed April 18, the time for the sale of the New York and Erie railroad, was postponed to the 4th of July, 1850, provided it should resume the work of construction within two years and complete the road within seven years from the date of the passage of the act.

of portions of the enlargement of the Erie canal between Schenectady and the west bounds of the city of Utica; between Syracuse and the village of Jordan; between Lyons and the west bounds of the city of Rochester; at Lockport; between Black Rock and Buffalo; and also parts of the Black River and Genesee Valley canals; and the improvement of the Oneida River.

The work under contract for the enlargement and improvement of the Erie canal, including that which has been completed, as estimated at contract prices, amounts to		$13,026,919.92
The amount that has been paid for work done under the contracts and upon those that have been cancelled, is	$10,518,319.73	
The amount due and remaining to be paid for work done is	210,324.47	
Making the total amount of work done.		$10,728,644.20
And the total amount of work remaining to be done to close the contracts.		$2,298,275.72
The work under contract for the construction of the Genesee Valley canal, including that which has been completed, as estimated at contract prices, amounts to		$4,223,305.68
The amount that has been paid for work done under the contracts and upon those that have been cancelled is	$3,120,881.34	

The amount due and remaining to be paid for work done is	$47,970.49	
		$3,168,851.83
And the total amount of work remaining to be done to close the contracts is		$1,054,453.85

The work under contract for the construction of the Black River canal and Erie canal feeder, including that which has been completed, as estimated at contract prices, amounts to		$1,760,046.12
The amount that has been paid for work done under the contracts and upon those that have been cancelled	$1,670,680.79	
The amount due and remaining to be paid for work done, is	4,676.37	
Making the total amount of work done.		1,675,357.16
And the total amount of work remaining to be done to close the contracts.		$84,688.97

The work under contract for the improvement of the navigation of the Oneida river, including that which has been completed, as estimated at contract prices, amounts to	$70,122.56

The amount that has been paid for work done under the contracts and upon those that have been cancelled is	$53,963.04	
Making the total amount of work done.		$53,963.04
And the total amount remaining to be done to close the contracts is.....		$16,159.52

The work under contract upon all of the State canals, including the Oneida River improvement, and the work which has been completed, as estimated at contract prices is		$19,080,394.29
The amount which has been paid for work done under the contracts, and upon those that have been cancelled is	$15,363,844.90	
The amount due and remaining to be paid for work done is	262,971.33	
Making the total amount of work done.		$15,626,816.23
And the total amount remaining to be done to close the contracts.....		$3,453,578.06

The Legislature of 1842 convened at a period of great embarrassment in the financial affairs of the State. The treasury was empty; our credit seriously impaired; the State stocks were selling at ruinous sacrifices; temporary loans were nearly at maturity; the time for the quarterly

payments of interest on the public debt, amounting to more than $20,000,000, was fast approaching; contractors were pressing for payment, and the progress of the public works virtually suspended. Under such circumstances to have continued large expenditures, or indeed any not demanded by imperious necessity, or good economy in reference to the condition of the public works, and that good faith due to our citizens with whom the State had existing engagements, would in my opinion have been a wanton disregard of public duty.

A State tax of one mill on the dollar of the valuation of real and personal estate was imposed. The sum of $4,204,-741.52 was appropriated for specified objects, and all the public works under contract were directed to be suspended, excepting such as were "necessary to preserve or secure the navigation of the navigable canals," "to preserve the work already done from destruction by ice or floods, or the completion of such work as would cost less to finish than to preserve that already done."

Whether this act made ample provision for meeting the contingencies, before referred to, I am unable to say; but I am apprehensive that adequate authority and means were not left with the Canal Commissioners, to enable them with good economy to carry out the general policy of the Legislature.

In the cities of Albany, Schenectady and Rochester, the public have been seriously discommoded by the unfinished state of bridges on streets intersected by the canal. The large sum already expended on these structures, and the small amount necessary to complete them, have tended to aggravate the public mind. If the Legislature of 1842 had been fully apprised of the public inconvenience alluded to, I am confident they would not have permitted them to exist. There may be other cases similar to those I have mentioned.

There is also some reason for apprehending that the suspension has operated injuriously on many contractors, and particularly upon those who had made large outlays in necessary preparations.

The praiseworthy and patriotic exertions of the last Legislature to relieve the State in the crisis of our pecuniary affairs, is worthy of all commendation; and if the policy then adopted has resulted in some injury to individuals, it must be ascribed to the necessity of the case, rather than a willingness that any portion of our citizens should suffer detriment.

The policy of arresting large expenditures, and providing for the prompt payment of the interest, and a gradual diminution of the State debt, has exerted a salutary influence in reviving our credit.

The question of a direct tax, rendered necessary by the exigency of our affairs, has been clearly approved by the people; but direct taxation should not be regarded as a permanent measure of finance for the purpose of constructing public works, but as one of a temporary nature, called for by an existing emergency. All future appropriations should be made with reference to as speedy a relinquishment of the tax as the public credit and the general welfare of the State will permit.

Very little if any work has been undertaken for the enlargement of the Erie canal, not rendered necessary by the worn and decayed condition of the mechanical structures.

Already has the transportation on the canal been much benefited by the use of the new work between Albany and Schenectady, at Philip's locks, and at the Little Falls. At these points the navigation has been entirely relieved from the detention and delay which had been sensibly felt for several years.

I am convinced that the completion of the unfinished work at the Schoharie Creek, at Spraker's, at Canajoharie, Fort Plain, the Indian Castle Creek, at Syracuse, the work connected with the reduction of the Jordan level, at Mace-

don, and at Lockport, would be essentially useful, and some of it may be indispensably necessary.

The speedy completion of the Black River canal and feeder to and including the summit level, and the Genesee Valley canal, as far as the first feeder from the Genesee River south of Portage, is doubtless anxiously desired by the friends of these improvements. I do not feel that I should faithfully discharge my duty did I not recommend for your careful consideration these portions of the public works. This should of course be done with strict reference to the financial condition of the State.

The present low prices of labor and provisions are highly favorable to a successful prosecution of the works now under contract, and they should be resumed as soon as a just regard to the public welfare will permit. But great caution should be observed in increasing the State debt, already too large. That the State has the ability eventually to complete all her works which have been commenced, cannot, in my opinion, be questioned.

The Canal Commissioners will, doubtless, in their annual report, exhibit in detail the condition of the works under their charge. This document will demand your careful attention.[3]

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[3] Chapter 30, passed February 28, provided for the construction of bridges across the Erie canal at several points according to the Governor's suggestion. Chapter 48, passed March 16, authorized the commissioners of the canal fund to borrow $320,000 to be used in paying arrearages due to canal contractors. Chapter 181, passed April 18, prohibited certain canal officers from becoming interested in any hydraulic works dependent on the canals, or in any line of boats regularly navigating the canals, or in any contract as contractors, or in any canal work except for their ordinary compensation.

Chapter 184, passed April 18, "to increase the revenues of the state, by extending the market for salt, coal and lead," regulated canal tolls on these articles. Chapter 219, passed April 18, provided for the relief of contractors on work which had been suspended by the act of 1842.

Chapter 220, passed April 18, provided for the payment of arrearages in the construction of the Glens Falls feeder. Chapter 240, passed April 18, appropriated $300,000 to the payment of arrearages to contractors, and to other incidental purposes resulting from the suspension of canal construction by the act of 1842. A concurrent resolution was adopted, authorizing the canal commissioners to extend and enlarge the lock at Black Rock.

The following statement shows the aggregate amount of the State debt, on the 30th of September, 1842, and the sum required to pay the interest thereon for the current year:

	Amt. of debt.	Amt. of interest.
At 4½ per cent. interest...	$587,700.00	$26,446.50
At 5 per cent. " ...	16,247,095.39	812,354.76
At 5½ per cent. " ...	1,628,000.00	89,540.00
At 6 per cent. " ...	2,507,388.06	150,443.28
At 7 per cent. " ...	3,754,794.28	262,835.60
6 per cent. of 1837, pays no interest	12,771.27	
	$24,737,749.00	$1,341,620.14

The principal of this debt is payable as follows:

On demand	$118,390.48
In the year 1843	227,327.00
1844	235,379.07
1845	4,234,201.61
1846	571,304.00
1847	11,000.00
1848	1,954,993.00
1849	1,766,700.00
1850	1,256,000.00
1851	50,000.00
1852	20,000.00
1854	500,000.00
1855	4,000,000.00
1858	3,546,305.34
1861	1,300,000.00
1862	900,000.00
1865	28,000.00
Payable at pleasure.....	698,074.27
	$24,737,749.00

Available means in the hands of the Commissioners of the Canal Fund, applicable to the payment of the debt of 1845.....	$1,407,665.85
	$23,330,083.15

There is in addition to the preceding available means, the sum of $514,869.62 unavailable, and which the comptroller states consists of loans to insolvent banks.

More than three-fourths of the debt which falls due in 1845, about $2,000,000 of that of the Genesee Valley canal, $739,000 of the Black River canal, and about one-half of the stock for the enlargement of the Erie canal, $162,000 of the New York and Erie railroad stock, and $63,000 of the seven per cent stocks issued in 1842, are held by foreigners.

The amount of expenditures "on and for all the State canals, and charges caused by or growing out of them," during the last fiscal year is		$1,730,188.17
The amount of payments from the treasury on account of the General Fund, during the same period, is.....		1,205,367.79
		$2,935,555.96
The amount of revenue of the State canals received during the same period, from all sources, is	$1,798,692.78	
The amount of receipts into the treasury on account of the General Fund, during the same period, is	938,197.80	
		2,736,890.58
Deficit		$198,665.38

As the preceding statement closes with the fiscal year, it does not, of course, include any part of the mill tax.

In addition to the preceding, there is a contingent liability for stock issued and loaned to railroad companies that have thus far paid the interest, amounting to $1,720,000. The annual interest on these liabilities amounts to $89,100.

There remains unsold 33,797 acres of land belonging to the General Fund, estimated to be worth $19,961, which yield no revenue.

The productive capital of the Common School Fund, is $1,968,290.72. There also belongs to this fund, 395,520 acres of land, valued at $258,295, which are unproductive.

The amount received into the Treasury for revenue of this fund during the last fiscal year, is	$92,029.06
And the annual appropriation from the income of the United States Deposit Fund..	165,000.00
	$257,029.06
The balance of revenue in the Treasury on the 30th of September, 1841, was.....	90,161.82
The amount of common school dividends and miscellaneous expense paid from the Treasury during the last year, is.....	275,089.28
Leaving a balance of revenue in the Treasury on the 30th of September last of	$72,101.70

The capital of the Literature Fund is invested in State, bank and insurance stocks, and amounts to $268,990.57. To this fund also belong 10,913 acres of land, valued at $4,845.

The revenue of this fund during the last year is.....	$19,500.94	
And the annual appropriation from the income of the United States Deposit Fund	28,000.00	
		$47,500.94
The balance of revenue in the treasury on the 30th Sept. 1841, was.....		20,271.83
		$67,772.77
The dividends to academies, and contingent expenses charged upon the revenue of the Fund, during the same period, amount to..		49,789.62
Leaving a balance in the Treasury on the 30th of Sept. last.....		$17,983.15
The United States Deposit Fund consists of loans on mortgage, by county commissioners, amounting to.....		$4,631,890.05
Deduct amount due the General Fund.....		617,369.34
Amount received from the United States....		$4,014,520.71
The amount received into the Treasury, during the last year on account of revenue, is.		$311,737.31
The charges upon the revenue during the same period, were.....		304,737.31
Leaving a balance in the Treasury of...		$7,000.00

On the first day of July last there were in this State 10,785 school districts; and the number of children taught the past year was 598,901.

The number of volumes in the district libraries on the first of January, 1842, was 811,461; and at this time it probably exceeds 1,000,000.

The amount of disbursements for common schools during the last year is as follows:

To teachers from the public money	$588,466.54
To teachers from contributions by individuals on rate bills	468,727.27
Payments for libraries	98,226.09
	$1,155,419.90

The officers who preside over the departments of finance and education will submit in their annual reports statements in detail, with such general suggestions as they may deem useful.

The subject of education in all its departments merits your most attentive consideration. It is in my opinion quite proper that in relation to a subject of so much importance, the Legislature should annually satisfy themselves that the Common School and Literature Funds are safely invested, and rendered as productive as practicable.[4]

The revenue for the year ending the 30th of September last, has been materially affected by a reduction in canal tolls, and in the auction and salt duties, as compared with the preceding year.

The tolls are less by	$192,968.86
The auction duties are less by	6,417.59
The salt duties are less by	15,472.35
	$214,858.80

[4] By chapter 133, passed April 17, the office of commissioners and inspectors of common schools were abolished, and the office of town superintendent of schools was created. The Board of Supervisors was authorized to appoint additional county superintendents in counties containing more than 150 school districts. The act also contained various other provisions relating to school administration.

How these essential items of revenue are to be affected by the business of the current year, it is impossible now to say. If the general prosperity of the country should assume a more favorable aspect, as I trust it will, it would favorably affect these items of revenue. It is not probable that the receipts from these sources will be diminished.

The embarrassed state of the Treasury, and the severity of the times, demand that every department of the public service should be placed on the most rigid principles of economy. No expenditure should now be incurred that is not called for by the public necessity, and good economy in reference to existing engagements.

Every species of labor is depressed, the prices of all the agricultural productions are uncommonly low, and the necessaries of life cheap. Under such circumstances, it is proper that there should be a corresponding reduction in the expenses of the Government. An effort should be made to encourage a return to the industrious and frugal habits of our forefathers.

It would be quite appropriate that the Legislature should, by a prompt application to business, and a short session, set an example of public economy.

The number of acres of land charged with taxes in 1841, was 27,450,619, valued at $531,987,886; and the personal estate at $123,311,644; making an aggregate of $655,299,530. On this aggregate was collected for county charges $874,513.31, and for town charges $2,298,842; amounting to $3,173,355.97; equal to nearly five mills on every dollar of valuation. The charges in five counties range from ten to thirteen mills; in twenty-four counties from five to eight mills; and in thirty counties from one and a half to five mills.

There is unquestionably much inequality in the estimated value of real and personal estate. The assessors of each town have probably fixed upon as low a valuation as their sense of duty would permit. The supervisors possess

the power of equalizing the valuations among the several towns; but there is no provision for effecting a like result as to the different counties.

The evil that has grown out of this inequality has heretofore only affected the towns. The imposition of a State tax renders it proper that some uniform system in making assessments should be adopted, applicable to every county in the State.[5]

The superintendent of the Salt Springs reports the quantity of salt manufactured from the first of January to the first of November, 1842, at 1,956,940 bushels, which is 1,017,501 bushels less than for a corresponding period of time in 1841. The receipts by the superintendent from all sources for the past year are.....	$119,401.04
Disbursements for the same period.....	40,929.63
	$78,471.41

This officer ascribes the large reduction in the quantity manufactured the past year, to an excess in 1841, the business embarrassments of the country, and the increased quantity of foreign importations while the duties were twenty per cent.

It is in all respects important, that the quality of our salt should be rendered as perfect as possible. Its extended use will doubtless depend very much on the character of the article.

The solar coarse salt is admitted to be superior, but the fine is said to be inferior in point of quality to that of

[5] The office of State assessor was created in 1859 by chapter 312. The act authorized the Governor and Senate to appoint three state assessors, who were to hold office for three years after the first appointment. The State assessors together with the commissioners of the land office, were to compose a state board of equalization to equalize assessments and taxes among the several counties.

English manufacture, which for most uses takes a decided preference in market. This subject demands your careful examination.

It will probably not escape your notice, that the disbursements appear large as compared with the receipts. How the expenditure compares with previous years, I am unable to say, nor whether any part of it is for new erections. The diminished quantity of salt manufactured during the past year, could hardly have rendered additional pumps, reservoirs, or other works, necessary to supply the manufacturer with water.

The superintendent is authorized by statute to make such additional works, machinery, &c. for pumping water, as he may deem necessary, and to keep all the works belonging to the State in complete repair. The accounts for expenditures thus incurred, are to be audited by the inspector, and paid by the superintendent. The accounts of the inspector are to be audited and paid by the superintendent.

The disbursement of public money is, under all circumstances, a delicate duty. The public interest requires, and the officer should desire, that it should be done under such checks and guards as will insure public confidence. While on the one hand there should be no useless forms, there cannot, on the other, be too much caution.

I recommend that the superintendent be required, before he makes any new erection, to submit, for the approval of the acting canal Commissioner on the station of canal where the salt works are situated, a plan and estimate of its cost; and also, at the beginning of every month, an estimate of the expense for repairs. The accounts of the superintendent should be certified by the Commissioner, before they are presented to the Comptroller for final adjustment.[6]

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[6] Chapter 184, passed April 18, was enacted in part for the purpose of extending the market for salt, coal and lead, with the ultimate object of

These remarks do not proceed from intimations affecting the present officers, but from impressions that the system is defective.

The clerk of the Auburn prison reports that during the last fiscal year the receipts amounted to	$64,441.12
And the disbursements for the same period.	67,870.79
Excess of disbursements	$2,429.67

He accounts for this excess by stating that for the last year the rations were let for one cent and a half higher than for the year immediately preceding, which he estimates to be equal to	$2,073.87
A reduction in the receipts from visitors	940.87
A falling off in the several contracts by the operations of the act of 1842, in confining the labor of convicts to the manufacture of such articles as are principally imported	1,564.00
	$4,578.74

The superintendent of the Mount Pleasant prison reports the receipts for the same period at	$53,935.10
And the expenditures at	72,801.28
Excess of disbursements	$18,866.18

increasing state revenues. Chapter 229, passed April 18, regulated the administration of the superintendent of salt springs, and prohibited him and his assistant from engaging in other business inconsistent with their official duties.

He states, however, that the earnings of the prison should be credited with the labor for the stone procured for the State Hall, which he estimates at	$1,125.00	
For work done on the female prison	12,500.00	
For payments to sheriffs for conveying convicts	2,361.52	
		$15,986.52
		$2,879.66

The report from the Mount Pleasant prison states that the receipts have been diminished by the operations of the act of 1842, but does not estimate the amount.

There have been 1,417 convictions for criminal offences, by the courts of record, since the first of January last, returned to the office of Secretary of State by the clerks of such courts; of which 544 were convictions for felonies, including five cases of murder, to wit: two in New York, one in Niagara, one in Sullivan, and one in Tompkins. It is estimated that if the number of convictions by courts of record, from which returns have not yet been received, are the same as last year, it would swell the aggregate to 1,585; of this number, 602 were for felonies.

The number of convictions by courts of special sessions, is 2,278; which added to the number of convictions by courts of record, will make 3,695, as the whole number of convictions returned to the Secretary's office.

Our fellow citizens who are engaged in various mechanical pursuits, have on several occasions presented to the consideration of the Legislature, alleged grievances in

consequence of State Prison competition. The act of 1842 will, probably, in its operation, lessen to some extent the evil complained of.

It is proper to encourage the industry and enterprise of the citizen mechanic, and so to direct the labor of convicts as not to come in competition with them. But humanity requires that these unfortunate beings should be engaged in some exercise conducive to health; and it is also essential that the labor should be rendered productive.

If it should be found that convicts can be safely and beneficially employed in the mining districts, it may be proper to convert most of their labor to that object.

The granite of Massachusetts has been extensively used in the city of New York and other places. It is represented that stone of a quality equally good, has been found in the Highlands, about fifty miles from New York. If a careful examination should prove the stone to be good, and the quarries accessible, I can easily imagine that convict labor could be profitably employed in quarrying and rough dressing, which would not materially interfere with the industry of the mechanic.

There are at present in the Institution for the Instruction of the Blind, sixty-three pupils, educated and supported at the expense of the State; and in that for the Deaf and Dumb in the city of New York, one hundred and eighteen.

The term selected by these pupils is generally five years in the first instance, which is invariably extended to six or seven years, whenever the directors, and the pupils or their parents or friends desire such extension. Both these institutions are said to be in a high condition of efficiency and excellence; capable of affording to those who have been shut out from the ordinary avenues of intellectual improvement, ample opportunity to store their minds with knowledge, and to secure, by their exertions, their daily bread, and a comfortable competency for the future.

It is represented that the contributions required by the act "to provide for sick and disabled seamen," from sailors and mariners, are regarded as oppressive.

I trust that any application which may be made by this interesting portion of our fellow citizens, will receive, as it deserves, attentive consideration.

My predecessors have, on several occasions, brought to the consideration of the Legislature, the subject of the judiciary, and have concurred in the necessity of some change in the system. Various propositions have been discussed by successive Legislatures, but nothing has been effected.

All the representations made to me, concur in stating that the court of chancery is so overburthened with business, that injurious delays are experienced in the administration of justice. This is not the fault of the able and indefatigable officer at the head of that court, but it results from the fact that the constitution has not made adequate provision for the expansion of the judicial system with the increased population and business of the State. Although, as I learn, there have been no delays in the Supreme Court, for the last four or five years, there is reason to believe that the labors which now fall upon the justices of that court, are greater than any three individuals may always be able to endure. And whatever exertions may be made, the increase of judicial business in this great State will soon render an increase of the judges indispensable.

My pursuits have not qualified me to point out the best remedy for these evils; but I think the time has arrived when something should be done. If an amendment of the Constitution should be found necessary, it cannot be brought about in less than two years, and no time should be lost in taking the first step towards that result. Upon this, as well as upon other subjects, I am not in favor of radical changes, unless there is a plain necessity for mak-

ing them. I would not abandon a system which in the main has worked well, and enter upon some untried experiment; but I would enlarge the present system, so as to meet the public wants. I commend the whole subject to your careful consideration.

The statute makes it the duty of the State Printer to print the legislative journals and documents, and the laws passed at each session of the Legislature, in addition to publishing the State paper in which certain legal notices are to be inserted.

The opinion is quite prevalent that this branch of the public service is susceptible of material and useful change, and that such change is demanded by considerations connected with public economy and retrenchment.

The printing for the Legislature and the several Departments, and the annual publication of a volume of laws is in all respects a mechanical duty, and I see no reason why it should not, like every other branch of business which involves the expenditure of money, be the subject of contract, based upon a just equivalent for the services rendered. The State paper would then only have the insertion of legal notices, most of which are paid for by the individuals for whom the services are rendered.

In connection with this subject it has occurred to me that the public interests would be essentially promoted by providing for the publication of all the laws which shall be designated by the Secretary of State as of a general nature, in at least one newspaper in each of the counties of the State, together with such laws of a local character as may be of interest to the citizens of the particular county where they shall be published. This would bring home a knowledge of the laws to the people much more effectually than the present practice of confining the publication to the State paper. The expense would not be very large, and it would be greatly outweighed by the more general diffusion of a knowledge of the laws. The additional ex-

pense would be more than saved by the change which has been suggested in relation to the other public printing.[7]

The impression is very general that several of the public officers in the city of New York, particularly those who are connected with our inspection laws, are extravagantly paid for their services. This ultimately operates as a tax either upon the producer, or the consumer, or both. There may be other public officers whose compensation exceeds a just equivalent for the services rendered. Should you find such to be the case, you will apply the proper corrective.[8]

The privileges granted to banking institutions, doubtless had for their object the public accommodation; for any other purpose they would be entirely inadmissible. All legislation on this subject should be in reference to the accomplishment of this end, and the banks should be made to do their duty to the people. A bank, while it pursues the fair and legitimate object of its creation, has the power of aiding all the business relations of the country; but when it is converted to the purpose of accommodating stockholders, directors, speculators and monopolists, to the exclusion of business men, it becomes a curse to any community, and I can hardly imagine a greater evil. Such a system is calculated to make the rich richer, and the poor poorer.

The banking institutions should at all times be subject to the control of the Legislature, who cannot well be too

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7 The office of State printer was created by chapter 4, passed January 21, and was to be filled by the legislature in the same manner as the office of Secretary of State. He was required to publish a newspaper in Albany, in which should be published the laws, notices and other advertisements. In addition to the State printer each house of the Legislature was authorized to choose a printer whose duty it was to print its journals. Executive officers, canal commissioners and the secretary of State were authorized to make contracts for printing with any printer other than the State printer or the printer for either house. Chap. 98, passed April 12, required the Secretary of State to certify to the correctness of the laws published by him, and authorized the laws so published to be read in evidence.

8 Chapter 202, passed April 18, repealed all laws requiring the inspection, measuring or weighing of various specified articles of merchandise, produce or manufacture, except salt manufactured in the State.

watchful in checking their natural tendency to partiality, and inflated issues. Every institution that diverts its means from the legitimate purposes of banking, should be promptly deprived of its charter. Every institution that faithfully fulfills its duties to the public, should be sustained and protected.

The billholder does not participate in the advantages resulting from the privileges granted to banking institutions. He has no authorized agency in conducting their affairs, and is the instrument of giving circulation to their issues, which results in a benefit to the stockholder. Under such circumstances, with power and duty all on one side, nothing can be more just than that the billholder should be effectually protected from loss and inconvenience.

The Safety Fund system was designed mainly to accomplish this end, and while the fund remained adequate, it furnished the means for a prompt and certain redemption of the notes of insolvent banks, and gave greater security to the billholder, than any other system in practice in this country.

Until recently, the public have doubtless felt great security in this system; but the fund has become so much impaired by the failure of several banks, that it is now unable to meet the immediate calls upon it. The contributions required by law will not provide for a complete redemption of the bills of insolvent banks until the first of January, 1849. This estimate is based on the supposition that no part of the bills of the banks that have failed, will be paid from their assets.

The facts developed in relation to the insolvent banks, show that there has been, in some instances, great abuse in their management, and a reckless disregard of moral obligation. How it should have happened that a bank could so improperly conduct its affairs as to cause a total loss to the stockholders, and leave no assets for the redemption of its bills in circulation, and yet escape the timely obser-

vation of the Bank Commissioners, I am unable to imagine. It may have resulted from the want of proper means for ascertaining the real condition of the banks. But whatever may have been the cause, it is quite evident that the appointment of Commissioners has not answered all the valuable ends which were anticipated from the measure.

It has been ascertained that the issues of some banks that have failed, have greatly exceeded the amount authorized by law. To guard against such an abuse in future, I renew the recommendation of my predecessor, that the circulating notes should be registered and countersigned by some public officer.

The people have already suffered so much from the frauds and insolvency of some of these institutions, that the subject demands your careful attention.

In almost all instances, the mal-practice of these institutions can be traced to the neglect, or fraudulent acts of their officers, and within the last six years, there have been several extraordinary cases of peculation and fraud. I recommend that provision be made by law for punishing all future transgressions of the kind by imprisonment in the State prison.

The stockholders have no means of effectually guarding against mismanagement; but they ought to regard themselves as responsible for a proper selection of officers.

In recommending the most efficient measures for protecting the public against the frauds alluded to, it must not be understood that I feel any hostility to well conducted banking institutions. Our banks were among the first in the Union to resume specie payments, after the general suspension in 1837; and the sound institutions have steadily maintained that position ever since. I would make no change in the present system, merely for the sake of change, or in a spirit of hostility to banks. No restrictions should be imposed that are calculated unnecessarily to embarrass the banks; but every solvent institution has a deep interest

in the adoption of such measures as will revive and restore public confidence in the banking system. That system has become so interwoven with the affairs of the people that it cannot be abandoned without great public inconvenience. But the banks can only be supported by such a thorough reform of abuses as will give the people a sound currency, always convertible into gold and silver without expense or delay.

Eighty-five associations and individual bankers have deposited the requisite securities, and received circulating notes therefor under the general banking law. Seven of these have been closed by their own officers, and have redeemed their notes at par, excepting $1,108, now outstanding, for the redemption of which an equal amount has been deposited with the Comptroller. Twenty-six have been closed by the Comptroller, that had at the time of failure a circulation of		$1,197,559.90
Securities of these banks consisted of bonds and mortgages deposited	$419,497.86	
State stocks	1,111,200.00	
	$1,530,697.86	
Of which the Comptroller has sold and realized	$896,764.30	
And received from the receiver of the Bank of Western New York	400.00	
Bonds and mortgages are now in suit for collection amounting to	31,625.00	

And bonds and mortgages are held in trust for the Albany City Bank, for the redemption of the notes of the Farmers' Bank of Orleans, amounting to.	$26,250.00	
		$955,039.30
Loss to bill holders, exclusive of interest in case the bonds and mortgages unsold are redeemed at par value		$242,519.70

Fifty-two associations and individual bankers are now in operation.

The notes in circulation amount to $3,698,000.00

Securities, viz:

	State Stock.	Market Value.	
New York	$1,131,577.38	$1,000,000.00	
Indiana	170,000.00	36,000.00	
Illinois	565,000.00	113,000.00	
Arkansas	590,000.00	179,000.00	
Michigan	529,000.00	158,900.00	
Alabama	44,000.00	30,000.00	
Kentucky	31,000.00	24,000.00	
Maine	90,000.00	75,000.00	
Cash interest deposit	6,707.88	6,707.88	
	$4,673,664.23	$1,622,607.85	
Bonds and mortgages		1,516,378.97	
			3,138,985.82
Deficit in amount of securities			$556,619.18

It will be seen by the preceding statement that the securities, estimating the State stocks at their market value, and the bonds and mortgages at their full amount, are insufficient by $556,619.18, to redeem the notes in circulation.[9]

The State of New York is essentially agricultural. The public munificence cannot be better bestowed, than in promoting and advancing its prosperity. Every business profession is in a great measure dependent on the profitable application of labor in the various productions of the soil, and in improvements in the systems of husbandry.

Our agricultural societies, when properly conducted, are well calculated to infuse a spirit of emulation, and an experimental knowledge of the utility of a rotation of crops, the cultivation of seeds adapted to the character of the soil, economy in the application of labor, by the introduction of useful implements of husbandry, and improvements in the breed of animals.

The importation of large quantities of grain from foreign countries, in 1836 and 1837, is an anomaly in the history of our country, and will hardly be credited by the next generation. It affords conclusive evidence that the efforts and enterprise of the people were at that time misdirected.

The State Agricultural Society will doubtless submit a report of their proceedings during the past year, which will disclose interesting information.

I recommend this subject to your special care, under the conviction that it is intimately connected with the substantial welfare of the people.[10]

The act organizing the militia of this State imposes a burdensome duty, which to some extent operates unequally. A large proportion of those who perform military service

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[9] The office of bank commissioner was abolished by chap. 218, passed April 18. The same act contained provisions relative to printing and circulation of bills, and the administration of bank affairs by the comptroller.

[10] A concurrent resolution was adopted directing the commissioners of the land office to set apart a room in the old State Hall for the use of the State Agricultural Society.

are farmers, mechanics and common laborers. The present system contemplates an organization, an inspection of arms and equipments, and improvement in military science. Those who are enrolled are required annually to meet once by companies, once by regiments, and, in addition to this, the officers, non-commissioned officers and musicians, two days in succession, for the purpose of "training, disciplining and improving in martial exercise."

In case of war or insurrection, the country depends essentially on an effective and well organized militia. It would not be proper to dispense with any of the present requirements that serve beneficially to accomplish this end, nor such as are necessary to keep up a proper organization and inspection. But I apprehend experience has shown that trainings for the purpose of improvement in military science, have failed to accomplish that end, except in cities and villages, where meetings are frequent and convenient. It is said that a raw recruit is as easily instructed as one taken from the ranks of the militia.

I am very strongly inclined to the opinion that if the militia laws were so amended as to keep up an organization, by a perfect enrolment, and a full corps of officers, and dispense with all trainings, excepting an annual meeting by regiments for the purpose of inspection and review, it would relieve the community from a burden, for which there appears to me to be no equivalent.

If the system should be changed as suggested, proper encouragement should be held out for a voluntary organization of uniform companies. Associations for such purposes should be authorized to make by-laws which should be binding under proper fines and penalties fixed by statute. To such companies the State might loan all the arms and equipments of a soldier for the field and camp, under regulations that would ensure their safe keeping and preservation.

The courts martial for the trial of delinquents, as now constituted, are regarded as expensive and vexatious. De-

linquents are required to meet at some central place in the regiment, and are sometimes kept there for several days in succession, and the collections for fines are generally absorbed in the expenses incurred.

A reduction of military service should be accompanied by a corresponding reduction in the equivalent now demanded from those enrolled who belong to the Society of Friends.

There is no remark more common than that the times are hard — the people embarrassed in all their business relations, and the public burden is constantly increasing. It is certainly just and proper, and your time cannot well be better employed than in efforts to mitigate the exactions of the government and alleviate the condition of the people.

The Adjutant General reports, that from the inspection returns made to his office for the current year, the aggregates of the several corps of the State militia, are as follows:

Cavalry	5,651
Artillery	10,090
Infantry	164,033
Riflemen	6,025
Uniform companies attached to infantry	2,545
	188,344

This total exhibits an increase of six thousand one hundred and eighty-six in the strength of the State militia.

I deem it my duty to call your attention to the consideration of an act entitled "An act to extend the exemption of household furniture and working tools from distress for rent and sale under execution," passed April 11, 1842.

In addition to the articles formerly exempt, this act adds those of "necessary household furniture, and working tools, and teams, owned by any person being a householder,

or having a family for which he provides, to the value not exceeding one hundred and fifty dollars."

According to my impressions, this act in all its provisions, has not met with general favor; and the objections which have been urged with much plausibility, are the uncertainty of the value of the articles exempt, and its effect on contracts existing at the time the law passed.

When an indebtedness is incurred by one individual to another, the means and ability of the debtor to pay are doubtless taken into consideration, and serve as a basis for the credit. The propriety of any enactment which diminishes the means or lessens the ability of the debtor to pay, is, to say the least of it, very questionable.

Whether the articles proposed to be exempted are worth one hundred and fifty dollars, or more or less, is a question about which parties may differ, and it is apprehended, will be the source of much litigation.

All laws which interfere with the relations between debtor and creditor, by impairing the obligation of contracts, have a demoralizing influence upon the people, and seldom, if ever, prove beneficial, even to those for whose benefit they were professedly made.

The repudiation of a public debt, is a heresy that I trust is no where seriously entertained. I am confident that the people of every State in this Union would reject the idea of such dishonor, and that they possess a patriotism and public spirit that would induce them to submit to any burden, rather than incur the opprobrium of such foul disgrace.

It is doubtless true that during the inflated period through which we have passed, many States improvidently entered on the construction of public works, altogether too much extended, and under an ill digested and defective system of finance. Hence the lamentable spectacle of ruined credit, and suspended and unfinished roads and canals. But in looking on this gloomy picture, we should

always recollect that this improvidence proceeded from the motive of improving the condition of the States, and not from the intention of contracting debts beyond their ability to pay. The error that has been committed on this subject, may be traced to that spirit of extravagance and speculation that pervaded every portion of our widely extended community. Few individuals were exempt from its direful consequences, and instead of indulging in feelings of recrimination, we should repair the sad consequences by frugality, industry, and economy in all the departments of life.

Success in the great work of improving the condition of a State by the construction of roads and canals, depends very much on a prudent system which shall have for its object the public good, rather than the gratification of sectional feeling or personal cupidity.

The public stocks of several of the States are discredited, and consequently much depressed in the money market; but the people of these States should not despair. Most of them possess a territory unsurpassed in its fertility. Every part of the globe is contributing by its surplus population to the settlement of the country, and preparing the way for the most important results. I indulge the cheerful hope, that the time is not very distant when most if not all the States will find means to resuscitate their credit, and finish their public works.

The State of New York should cherish the hope that such expectations will be realized. Her natural position, in reference to inland commerce, enables her to furnish the channels of communication for a trade that, in no very distant period of time, will be unsurpassed in magnitude.[11]

I embrace this public occasion to exhibit, in a brief manner, the gratifying position occupied by this State, in her agricultural, commercial and manufacturing interests.

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[11] As to the repudiation of state debts, see special messages of February 6, March 26, and March 29.

It appears by the last census, that the population of the United States amounts to 17,068,666, of which the State of New York has 2,428,917, equal to more than one-eighth of the whole population.

The number of bushels of grain raised is 615,525,302, of which this State has 51,721,827, equal to nearly one-twelfth part of the whole.

The number of heads of live stock are 74,264,322, of which this State has 10,128,042, equal to about one-seventh part.

The number of pounds of wool produced is 35,802,114, of which this State is entitled to 9,845,295, equal to one-fourth.

The number of commercial houses engaged in the foreign trade is 1,108, of which there are in this State 469, equal to something less than one-half.

The capital invested in foreign trade is $119,295,367, of which there belongs to this State $49,583,001, equal to nearly one-half.

There are 4,005 woolen manufactories of all kinds, of which there are in this State 1,213, equal to more than one-fourth.

The aggregate value of woolen goods manufactured, is estimated at $20,696,999, of which this State has $3,537,337, equal to about one-sixth part.

In the manufacture of woolen there are 21,343 persons employed, and in this State 4,336, equal to one-fifth.

The capital employed is $15,765,124, and in this State $3,469,349, equal to more than one-fifth.

The value of cotton manufactured articles is estimated at $46,350,453, and in this State at $3,640,237, equal to about one-thirteenth part.

The number of persons employed in the cotton manufactories is estimated at 72,192, and in this State at 7,407, equal to about one-tenth.

The capital employed is estimated at $51,102,359, of which this State has $4,000,772, equal to about one-tenth.

There has been paid from the public treasury, for all purposes connected with the establishment of the State Lunatic Asylum, the sum of $289,415.70. This sum was disbursed for the purchase of one hundred and twenty-five acres of land, the erection of a building five hundred and fifty feet in length, three stories high exclusive of the basement, and for incidental expenses. The building is located on an elevated and commanding site, about one mile from the city of Utica, and will accommodate three hundred inmates.

The act of 1842 appointed nine managers, to whom is assigned the general control of the property, the appointment of a superintendent, the establishment of by-laws, rules and regulations for the management of the asylum.

On the 9th of last September, they appointed Doct. A. Brigham superintendent and physician. This gentleman has for several years been engaged in the Retreat for the Insane at Hartford, in the State of Connecticut.

Some delay has occurred in preparing the building for the reception of patients, by the necessity of repairing some defects in the furnace for warming it, and in providing for an adequate supply of water. It is now contemplated that patients will be received as early as the 16th instant.

The managers will doubtless report to you a detailed statement of all their proceedings, and then I cherish the hope that this institution will soon dispense the relief to that unfortunate class of our fellow citizens, for whose aid and comfort it has been established by an enlightened spirit of philanthropy.[12]

At an extra session of the last Legislature my predecessor communicated a report from Mr. Brodhead, in relation to his mission to England, Holland and France, to obtain or transcribe papers affecting "the colonial or other his-

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12 Chapter 224, passed April 18, appropriated $10,500 for additional buildings for the state lunatic asylum.

tory of this State." From this report, and a letter dated at London on the 3d of last December, it appears that the agent cannot prosecute the object of his appointment to a successful termination, without a further appropriation of five or six thousand dollars. He states that he is in the midst of interesting examinations and that important documents have been selected for transcription. It is doubtless desirable that this undertaking should not be frustrated for the want of adequate means to carry it forward. If the Legislature should concur in this opinion, their early attention to the subject is rendered proper, in order that the agent may be relieved from the painful position of being engaged in a foreign mission without the requisite means.[13]

A concurrent resolution was adopted at the last session of the Legislature, requesting our Senators and Representatives in Congress to make use of their best efforts to procure the passage of a law refunding from the public treasury the fine inflicted upon and paid by General Jackson. Since that time the President of the United States, has, in a just and magnanimous spirit, commended the subject to the attention of Congress. Although the sentiment of the people of this State was expressed through your predecessors, yet it will be highly proper that it should again be heard through you, until, mingling with the voices of the people of the whole union, the National Legislature shall feel constrained to consummate this act of justice.[14]

WM. C. BOUCK.

January 3d, 1843.

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13 Chapter 122, passed April 13, appropriated $5,000 for continuing the work of transcribing the colonial documents.

14 The Legislature at this session adopted another concurrent resolution requesting the New York Senators and Representatives in Congress, to aid in procuring the passage of a bill to refund to General Jackson the fine of $1,000 imposed on him by a district court of Louisiana in 1815. See special messages of February 1 and 2.

SPECIAL MESSAGES.

January 11. To the Assembly: Transmitting resolutions adopted by the Legislature of Vermont, approving resolutions adopted by the New York Legislature in April, 1842, recommending the abolition of the franking privilege, and the reduction of letter postage.

January 11. To the Assembly: Transmitting resolutions adopted by the Legislature of Connecticut, disapproving as unconstitutional, the act of Congress appropriating public lands, and granting pre-emption rights therein; recommending the abolition of the West Point Military Academy, a protective tariff, and the repeal of the bankrupt law.

January 11. To the Assembly: Transmitting the annual report of the Adjutant-General.

January 17. To the Assembly: Transmitting a memorial from the Free Trade Association of New York, recommending the repeal of inspection laws, except as to merchandise acquired for the public use. [See note 8.]

January 17. To the Assembly: Transmitting resolutions adopted by the Legislature of New Hampshire, recommending the abolition of the franking privilege, and the reduction of letter postage.

January 28. To the Assembly: Transmitting the annual report of the Commissary General.

February 1. To the Assembly: Transmitting resolutions adopted by the Legislature of Rhode Island, in January, 1843, recommending that Congress provide for the payment of a fine of $1,000 imposed on Andrew Jackson, by the District Court in Louisiana in 1815, for contempt of court in wresting an original document from the court, disobeying the writ of *habeas corpus,* and imprisoning the judge. The city of New Orleans was then under martial law, General Jackson being in command. In February, 1844, Congress provided for refunding the fine with interest, amounting to $2700. General Jackson died June 8, 1845. [See note 14.]

February 2. To the Assembly: Transmitting resolutions adopted by the Legislature of Maine, relative to refunding the fine imposed on General Jackson by Judge Hall. [See note 14.]

February 6. To the Assembly: Transmitting resolutions adopted by the Legislature of Georgia, approving the resolutions adopted by the Legislature of Kentucky condemning the doctrine of repudiation of state debts. The Georgia resolutions also opposed the policy of assuming state debts by the federal government.

February 6. To the Assembly: Transmitting resolutions adopted by the Legislature of Georgia, declaring that "negroes or persons of color, are not citizens, under the Constitution of the United States; and that Georgia will never recognize such citizenship."

March 10. To the Assembly: Transmitting a communication from the Secretary of War, requesting a further cession of land near Black Rock for military purposes. The Governor recommended that the request be granted, reserving to the State the right to take stone from a quarry on the premises, and also reserving the right to resume control of the land in case of its abandonment by the federal government.[15]

March 10. To the Assembly: Transmitting a memorial and resolutions adopted by the Legislature of Michigan, recommending that congress provide for additional river and harbor improvements in that state.

March 10. To the Assembly: Transmitting resolutions adopted by the Legislature of Maine, recommending the abolition of the West Point Military Academy.

March 11. To the Assembly: Transmitting a communication from the American Charge d'Affaires, the Consul and one of the directors of the American Athenaeum at

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15 This cession to the United States of land at Black Rock, was made in 1844, by chapter 21, passed February 9, which contained the provisions relative to quarry rights, and reversion suggested by the Governor.

Paris, stating the object of that institution, and requesting copies of New York laws for its library.

March 17. To the Assembly: Replying to a resolution by the Assembly, requesting information as to the requisition by the Governor of Virginia for the surrender of Peter Johnson, Edward Smith and Isaac Gansey, as fugitives from justice, Governor Bouck said no application for their surrender had been made to him.

[See several messages and notes during Governor Seward's administration relative to this requisition.]

March 17. To the Assembly:

"EXECUTIVE CHAMBER,
March 17th, 1843.

"I herewith transmit a resolution passed at an annual town meeting, held in the town of Bainbridge, in the county of Chenango, on the 7th instant, asking for a postponement of the collection of any portion of the loan of the United States deposit fund, until the Legislature shall direct it.

The people of the State are doubtless much embarrassed in all their monetary concerns, and in my opinion should not under present circumstances be called upon to pay any part of the principal of this loan. I therefore recommend to your favorable consideration the resolution herewith submitted.[16]

WM. C. BOUCK."

March 23. To the Assembly: Transmitting a communication from the New York State Mechanic Association, recommending that rooms in the old State Hall at Albany be set apart for the establishment of a museum or depository of the mechanic arts.

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[16] The Legislature adopted a concurrent resolution directing that the comptroller's notice to pay twenty-five per cent. of the principal due on loan mortgages be modified by postponing payment until October 1, 1844.

March 26. To the Senate: Transmitting resolutions adopted by the Legislature of New Jersey, opposing the repudiation of state debts.

March 28. To the Senate: Transmitting resolutions adopted by the Legislature of Maine, declaring among other things that "the imprisonment of any citizen of Maine, by the authority of any state in the Union, without the allegation of the commission of any crime, and solely on account of his color, is a gross violation of the federal constitution,[e] as well as the principles of rational liberty," and directing the Governor in case of such imprisonment, to take measures to procure a discharge.

March 29. To the Senate: Transmitting resolutions adopted by the Legislature of Alabama, declaring against the repudiation of state debts and the assumption of such debts by the federal government, also pledging its support to Virginia in its controversy with New York.

April 6. To the Assembly: Transmitting a communication from the inspectors of Auburn State Prison showing a decrease in earnings said to have resulted from the act of 1842 in relation to prison labor, and recommending the enactment of a law permitting the completion of existing contracts. The communication was accompanied by the Attorney General's opinion relative to the legal questions involved.

April 10. To the Senate: Transmitting a communication from the inhabitants of Montgomery relative to the Erie canal from Spraker's Basin to the first lock east of the Schoharie creek. The records do not contain the communication.

April 10. To the Assembly: Transmitting a communication from the inhabitants of the county of Oswego, urging legislation authorizing the issue of a supply of state bank bills sufficient for the needs of the people.

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[e] U. S. Const. 5th Am.

April 18. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *April 18th*, 1843.

"I deem it my duty to apprise you, that I have received a communication from the Comptroller of the Treasury Department of the United States, stating 'that by an adjustment of the accounts of sales of the public lands of the United States, from 15th July to 29th August, 1842, inclusive, made for the purpose of ascertaining the distributive share of the several States and Territories, and District of Columbia, under the provisions of the act of 4th September, 1841, entitled 'An act to appropriate the proceeds of the sales of the public lands, &c.' it appears that the sum of $10,461.89 is due to the state of New York.

The advice of the Legislature in regard to the action of the Executive on the subject is respectfully solicited.[17]

WM. C. BOUCK."

April 18. The Legislature adjourned without day.

1844. JANUARY 2. LEGISLATURE, SIXTY-SEVENTH SESSION.

WILLIAM C. BOUCK, Governor.

ANNUAL MESSAGE.

FELLOW CITIZENS.—We have cause for mutual congratulation that you have been permitted to assemble as the representatives of the people under auspicious circumstances. During the past year we have enjoyed our civil and religious liberty; education in all its various depart-

[17] The Assembly adopted a resolution declaring against the policy of distributing to the States the proceeds of public lands, and that New York should decline to receive any money from this source.

ments has been beneficially extended; the mild influence of an enlightened religion has been felt far and near; the force and effect of moral example has been very generally diffused; our constituents have been exempt from pestilential diseases; the season has been propitious for agricultural productions, and commerce, manufactures, and the arts, have been successfully pursued; the languor and depression resulting from a crisis of great pecuniary embarrassment is passing away, and a more healthy state prevails in our business pursuits. I cannot but hope that we enter upon the duties before us with a just sense of gratitude to Almighty God for the numerous responsibilities to the people. To us are temporarily committed, so far as depends on legislation, the interests and well being of two and a half millions of highly intelligent and enterprising people; and it should be our earnest endeavor, as it is our solemn duty, so to conduct their affairs, that they may feel at the conclusion of our labors, that our assembling together has been profitable. Experience has shown a constant tendency to excessive legislation, and it is not every inconvenience that can be remedied by legal enactments. Every act of legislation should have regard to the public good; and every effort should be made to simplify and cheapen all the operations of government, and lighten the burdens of the people.

In our government the power of the people is delegated to representatives chosen by themselves, and their duties are thus rendered highly delicate and responsible; there are indeed no bounds to their powers, except those prescribed by the Constitution, and to that instrument we should yield implicit obedience.

It was reserved for the American people to demonstrate the practicability, and fully to appreciate, and soundly to apply, the great principles of popular government; and we should regard it as among our most sacred duties to transmit its blessings unimpaired to future generations.

In our widely extended country, with a population exceeding seventeen millions, rapidly increasing, and with interests diversified by many varieties of climate and pursuit, it requires forbearance, magnanimity, and a willingness to make mutual sacrifices, to preserve the harmony and integrity of the Union. Every citizen should regard it to be a moral as well as a political duty, to conform strictly to the requirements of the organic law, and respect the reserved rights of the several states. The federal Constitution has now been in successful operation for more than a half century, and although occasional encroachments have been attempted, they have generally been frustrated by the sound and healthy corrective of public opinion. There is perhaps no better evidence of the stability and permanency of our political institutions, than the fact that notwithstanding the rapid increase of our population, and its varied character, the people remain firm and unshaken in a faithful adherence to the federal compact. That instrument may not in all respects conform to the wishes of the people of all the states. It was framed under wide diversities of opinion, and was adopted in that spirit of compromise which at this time commends itself most emphatically to the favorable consideration of the people. It is justly regarded as the keystone of our political fabric, and they who adhere with the strictest fidelity to its letter and spirit, may be regarded as the best friends of our political system. A proposition to remodel or change the essential features of the national Constitution by a convention of the States, has not yet found, and is not, I trust, likely to find much favor with the people, and is only seriously entertained by those who are not duly impressed with its advantages, or friendly to the preservation of the Union.

The first Constitution of the State of New York was formed by a convention of delegates elected by the people in 1777. It remained unaltered through the long period of forty-four years, except in the provision relating to the

limitation of the number of members of Assembly and Senate, and in reference to the true construction of the twenty-third article, relative to the right of nomination to office. This change was made by a convention of delegates in 1801, under powers restricted to those particulars. Our first Constitution was formed by a convention of delegates assembled in the second year of the independence of America; at a period when the country was thinly populated, and under circumstances of great embarrassment. The delegates were without much practical experience in the science of government, and without the example of any existing institution based on republican principles, to guide their deliberations. To form a Constitution under such circumstances, which should so well adapt itself to the subsequent wants and wishes of the people, is a remarkable fact in our political history. It has also shown that the people entertain the opinion that the fundamental law should not be frequently changed, nor for light or transient causes. It was a defect in the Constitution of 1777, that it contained no provision for its amendment. This created the necessity for the Convention of 1821, as the only mode of making amendments, which had been demanded by the people. That Convention assembled under favorable circumstances for grave deliberation, and it was composed of men combining talent and patriotism in a degree not exceeded, perhaps, by any previous deliberative body. It met not only the exigency of the times, by removing the imperfections in the organic law which experience had pointed out, but it provided for future amendments, without the necessity of a convention in a mode entirely safe, practicable and satisfactory.[a] In this manner, amendments were proposed by the Legislatures of 1825 and 1826, providing for the election of justices of the peace by the people, and for the extension of the elective franchise; by the Legislatures of 1832 and 1833, providing for the election

[a] Const. 1821, art 8.

of the mayor of the city of New York by the people; by the Legislatures of 1834 and 1835, to restore the auction and salt duties to the General Fund; and by the Legislatures of 1837 and 1838, to give to the people the election of mayor in all the cities. Notwithstanding amendments to this extent have been proposed from time to time by the Legislature, and ratified by the people, there are, in my judgment, several others demanding your particular attention.

The organization of the Judiciary, by the present Constitution,[b] has for several years, been regarded as defective, and it appears to be generally conceded that some change is necessary. My predecessors have, on several occasions, invited the attention of the Legislature to this subject, and it was brought to their consideration in my last annual message. But hitherto no proposition has been matured which has received the sanction of two successive Legislatures, agreeably to the constitutional requirement.

Perhaps no feature of the Constitution is so likely to require revision and adaptation to the growth and advancement of the State, as that organizing the judicial system. Although adequate to the public wants at one period, it would not be singular, if in the lapse of time, unless capable of enlargement by legislative enactment, it should be found of too limited scope, or wanting adaptation, in some respects, to the existing condition of things. Since the adoption of the Constitution, the business of the State has been more than doubled; and litigation, it is believed, has increased in nearly an equal ratio. That which, twenty years ago, may have been brought within the powers of three judges of the Supreme Court, and a Chancellor, now taxes the energies of those functionaries beyond ordinary endurance. In the former, the labor is oppressive, however ably and cheerfully bestowed; and the Court of Chancery, although conducted with great industry and conceded ability,

[b] Const. 1821, art. 5.

has failed to despatch its causes with the promptitude due to the administration of this high equity tribunal, and the accumulation of business in these courts, and delays in the administration of justice, must extend with the increase of population and the consequent increase of litigation.

At several of the preceding sessions, resolutions have been submitted and discussed, proposing amendments which should impose additional restraints on the power of the Legislature, to appropriate the public money — but they did not receive the sanction of either House. The failure was owing, perhaps, more to conflicting opinions as to the details, than to hostility to the measure.

No one sincerely devoted to the well being of the State, and the happiness of the people, will deny the utility of imposing all needful guards against rash and lavish appropriations of the public money. The tendency to contract debt, and incur liabilities, which beset a State, rapidly advancing in a prosperous career, and with a population eminently enterprising and energetic, ought to be subjected to such constitutional restraints, as shall prevent excess, while they direct the great and valuable qualities which characterize our people, into safe channels and to right results. From discussions in regard to certain amendments to the Constitution, I cannot but think that the public good and public opinion demand some important changes in the organic law. I therefore deem it my duty to invite your attention to the subject — approaching it with a proper appreciation of its importance, with a firm reliance upon the patriotism and wisdom of the Legislature, and with the confident hope and expectation, that in a spirit of liberality and mutual concession, the necessary amendments may be matured at the present session.

In relation to the Supreme Court, I am not aware that anything can be necessary beyond a provision for the appointment of two additional justices. The Court of Chan-

cery needs the aid of two or more additional officers, having co-ordinate powers with the Chancellor. The Court for the Correction of Errors, has, for a considerable time, been over burdened with business; and it has become necessary to apply some remedy without delay. It is not probable that so numerous a body can ever discharge all the judicial business that may be brought before it, and it seems to be pretty generally understood, that there ought to be a new organization of that high tribunal.

The success of free institutions, and the welfare of the people, require that adequate provision should be made for the prompt and efficient administration of justice, so that no man shall be delayed, or unreasonably burdened, in the assertion of his legal rights. It is generally agreed that some amendments of the Constitution in relation to the judiciary, are necessary, and I recommend the subject to your early and careful consideration.[1]

I am also of opinion, that the Constitution should be so amended, as to take from the Legislature the power to loan the credit of the State to corporations; and that a limit should be fixed, beyond which the public debt should never be increased, unless it should become necessary for suppressing insurrection, repelling invasion, or carrying on war. And some farther constitutional checks should be adopted against the creation of a debt, or the expenditure

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1 One amendment adopted by the Legislature at this session, provided for a court of chancery, to be composed of a chancellor and three associate chancellors. The court of chancery and the court for the correction of errors were abolished in 1846.

Another amendment provided for two additional justices of the supreme court. Another amendment prescribed procedure in proceedings for the removal of judicial officers by the Legislature, or by the Senate, requiring that notice of charges be served on the judge twenty days before a hearing, and that the cause of the removal be entered on the legislative journals. This amendment was approved by the people in 1845, and with modifications its provisions are included in article six, section eleven of the Constitution of 1894.

of the public money for any purpose, not coming within the ordinary operations of government.[2]

The present Constitution provides that the "assent of two-thirds of the members elected to each branch of the Legislature, shall be requisite to every bill appropriating the public money or property, for local or private purposes."[c] A difference of opinion has frequently arisen as to the true construction of the words "local and private," by which the intent and meaning of the provision has been involved in doubt, and perhaps, in some instances, its object defeated. If a vote of two-thirds were required for every appropriation of the public money, except for the public defence, the embarrassments of this constitutional question would be obviated, the public money and property would be more securely guarded, and I cannot imagine that much inconvenience would result from it.

At the last session of the Legislature, a bill entitled "An act to improve the Court of Common Pleas, and reduce the expenses thereof," passed the Assembly by a strong vote, but at too late a period for the action of the Senate. The principles of that bill appeared to meet with general favor, and I recommend the subject for renewed action at the present session.

The suggestions in reference to changes in the judicial department of the government, are submitted with unfeigned diffidence. I offer them, nevertheless, as the result of my best reflections on the subject, to the judgment and intelligence of the Legislature.

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2 The Legislature adopted an amendment limiting a state debt to $1,000,000, without a vote of the people, except a debt for the purpose of repelling invasion, or suppressing insurrection. This amendment substantially in the form adopted at this session was included in the Constitution (article 7, section 12) by the Convention of 1846. It was continued in the Constitution of 1894, as section 4 of article 7. By an amendment adopted in 1905 the time limit on bonds issued under this section was extended from eighteen years to fifty years.

c Const. 1821, art. 7, § 9.

The foregoing suggestions for amending the Constitution, are based on the conviction, that all required modifications can be effected in the manner prescribed, and that the people prefer the established and economical mode of acting upon distinct and clearly defined propositions; and that a Convention can only be necessary when the Legislature shall fail to agree upon such amendments as may be demanded by the popular sentiment; and even in that case, the question should first be submitted to the people.

In my annual message of the last year, while expressing myself "opposed to extravagant expenditures and ill advised undertakings," I made a distinct avowal favorable to internal improvements by roads and canals, as "eminently calculated to aid the enterprise and promote the welfare of the people." I also expressed the opinion that "a public debt was objectionable under any circumstances, and should never be incurred except on the most weighty considerations;" that whenever it was authorized, not only adequate means and resources should be provided to meet the interest, but ultimately to pay off the principal, and that "expenditures for roads and canals should not be based upon revenue to be derived from indiscriminate taxation." These general views I have found no reason to change or modify. The events of the year, and the tendency of things to a healthier and more prosperous condition, have served to confirm rather than impair their force; and I have ventured to recall and repeat them, while inviting your careful attention to a subject of such importance to the public interest.

The State will have cause long to regret that the prudent policy of 1835 was departed from. The spirit of wild speculation and extravagance which for a while pervaded almost every part of our community, infused itself into our public councils, urged the State into improvident expenditures, and induced it to enter upon the rapid completion of works which ought at least to have been extended over such

a number of years as would have kept the expenditure within its means. The debt was swollen in a brief period to nearly twenty-seven millions of dollars, while the public credit, prostrated by excessive borrowing, was rapidly and fearfully declining. Whatever may have been the necessity and inducement to contract the early and comparatively moderate debt, for the prosecution of our great works of inland navigation, by which vast revenues were secured to the State, and for the liquidation of which specific funds were pledged, the State debt should, under no circumstances, have been permitted to accumulate to its present large amount. A debt for purposes of internal improvement should not be extended beyond the ability of those improvements to meet the interest, and ultimately redeem the principal. Every system of internal improvement should contain within itself the elements of its creation and maintenance.

In judging of the policy of 1842, it is necessary to bring into view our situation at the time it was adopted. The debt of the State had reached a frightful magnitude; the public credit had greatly declined and was still sinking; contractors were unpaid and suffering by the failure of the State to fulfill its engagements to them; and demands for the payment of temporary loans to the amount of more than a million and a half, were about to be made upon an empty treasury. Indeed the State was rapidly approaching a disastrous crisis in its pecuniary affairs. The sudden suspension of our public works alone would not then have rescued us from our difficulties. Our necessities required loans, and they could not be made without doing something to revive and invigorate our credit. This was effectually done, not only by arresting the progress of our public works, but by resorting to taxation, and by pledging the avails of the State tax, and the surplus income of the canals, to the public creditors. Such were the objects of the law of 1842, and the wise policy of the measure has been vindicated by its happy results.

In view of the large expenditure on some parts of the public works, and the comparatively small sums required to complete them, regrets have been felt in some quarters that the surplus revenue of the State from all existing resources, including the product of the tax, was placed beyond the reach of the officers of the government, or the Legislature, by the solemn pledges of that law. The means of doing anything more at this time, than making all needful repairs, and keeping the canals in a good navigable condition, cannot be obtained without increasing the present State tax, or disregarding the public faith. The former I deem highly inexpedient, and the latter entirely inadmissible.

While I approve of the present policy of the State, forced upon us by the exigencies of our situation, it cannot be denied that it has been attended with some injurious results. Individuals in some instances have been incommoded by the unfinished state of new bridges, designed to take the place of old ones removed; and in several places roads and streets have been so obstructed by the progress or changes made in the suspended works, as to cause considerable public inconvenience. I do not doubt that the Legislature will feel it to be their duty to remove all just grounds of complaint, in regard to these subjects. What is necessary to be done for these purposes, cannot be regarded in any other light than as repairs, and the inconsiderable expenditure required can, in my opinion, be made without a departure from the policy of 1842. Where new structures are so nearly finished, that it would cost less to complete them than to keep in repair the old ones they were designed to supersede, they should, in my judgment, be put in a condition to be used. Whether the new structures shall be brought into use in such cases, instead of sustaining the old ones, is only a question as to the best mode of making repairs, and keeping the canals in a good navigable state, and where economy is best consulted, by completing the former,

that course should be pursued. Under this impression, I recommend that the Canal Board be authorized to complete such new works, as in their opinion, can be done with better economy, than to sustain those designed to be superseded. It is also proper that I should suggest that some parts of the new works suspended, are exposed by the condition in which they are left, to great and permanent injury. Where this can be prevented, at an inconsiderable expense compared with the damages likely to be sustained, good economy requires it to be done. I commend the subject to your attention.[3]

It is certainly much to be regretted, that the State has so much unfinished work now entirely suspended, some of it under circumstances of such unavoidable exposure, as must soon materially affect its durability.

The people submitted, in the spirit of patriotism, to the payment of a direct tax, rather than see the State dishonored; but they have a right to demand its discontinuance as soon as the emergency which called for that measure shall cease to exist.

The tolls collected on the canals for the last season of navigation, amounts to $2,081,000, and shows a large increase of business, which is mainly from the Western States. The trade on the canal and Lake Erie presents, in its magnitude and variety, gratifying evidences that the business of the country is assuming a more healthy aspect, and that the enterprise of the people is to be invigorated by the steady, but sure returns, which always flow from industry, perseverance and economy, when properly directed.

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[3] A constitutional amendment was adopted at this session confirming the pledges and guaranties contained in the act of 1842, chapter 114, "to provide for paying the debts and preserving the credit of the State." The amendment also provided for reimbursing various state funds from which loans had been made to meet financial exigencies during the period when there was no direct tax. The amendment was not again adopted by the Legislature.

This trade will doubtless continue to increase, and there is reason to believe that the commerce of Lake Erie will be doubled within a short period.

The Wabash and Erie canal is nearly completed, and the navigation was opened last July. It passes more than two hundred miles through a fertile country, but like all new canals, has probably done but a limited business for the last year. The Miami extension it is said will be completed next year, and in connection with the Wabash and Erie canal, will open a canal communication between Cincinnati on the Ohio river and Lake Erie.

The people of the State of New York cannot but feel a deep interest in the construction of roads and canals in the Western States, and they have reason to rejoice that the pressure of the times, and the consequent financial embarrassments, are gradually yielding to the influences of a genial climate, a productive soil, and the industry of an intelligent and enterprising people.[4]

The following statement shows the amount of the State debt, the rate per cent of interest and, the sum required to

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[4] By chapter 278, passed May 6, the canal board was authorized "to direct the canal commissioners to cause to be made such repairs and improvements on unfinished work on the enlargement of the Erie canal as may be necessary to bring the same into use, in cases where said board shall decide that it is better economy or more for the interest of the State to bring into use such new work, than it is to repair and continue in use the old work for which it is to be substituted, and when the contractor shall have been settled with for any claims which he may have on account of said work."

Chapter 280, passed May 6, changed the method of choosing canal commissioners by providing for an election by the people. Four Commissioners were to be elected at the annual election in 1844, two of whom should hold office for two years and two for four years, and afterwards two were to be elected biennially for terms of four years.

Chapter 314, passed May 7, authorized a loan of $900,000 for the various purposes connected with canal construction, a part of which included damages caused by the suspension of work under the act of 1842. There were several local canal acts passed at this session, and also a concurrent resolution relative to the use of the enlarged canal at Rome.

pay the interest, on the 30th of September, 1843, including the stocks issued for defaulting railroads:

	Debt.	Interest.
At 4½ per cent.....	$587,700.00	$26,446.50
" 5 " "	15,983,766.95	799,188.35
" 5½ " "	1,628,000.00	89,540.00
" 6 " "	3,106,512.87	186,390.78
" 7 " "	3,938,517.28	275,696.21
Pays no interest.....	12,771.27	
	$25,257,268.37	$1,377,261.84
Debt due the specific funds.	577,438.14	
Available means in the hands of the Commissioners of the Canal Fund.....	1,987,538.89	
	$23,847,167.62	

There are unavailable means amounting to about $350,000, consisting of loans to insolvent banks.

There is also a contingent liability for stocks issued on loans to railroad companies, which have thus far paid the interest. This liability amounts to $1,720,000.

Public Revenue and Expenditures, for the fiscal year, ending 30th September last:

Received of tolls, after deducting the expenses of collection.....	$1,910,701.86
Rent of surplus water.....	1,241.25
Interest on current canal revenue.....	8,156.37
	$1,920,099.48
Revenue from the General Fund, from all sources.....	496,611.41
Proceeds of mill tax.....	576,114.92
	$2,992,825.81

Expenditures on the State canals for all purposes, including interest	$1,465,310.20	
Expenses for the support of Government, and for all charges on the General Fund, including interest..	1,027,249.83	
		$2,492,560.03
Surplus.....		$500,265.78

In connection with this exhibit, it is proper to remark, that about $500,000 will be required to pay allowances to contractors, and damages awarded by the Canal Appraisers.

There remains unsold 2,023 acres of land, valued at $1,012.

The productive capital of the Common School Fund is.....	$1,975,093.15
There also belongs to this fund, 357,824 acres of land, which yields no revenue, valued at	178,412.00
	$2,153,505.15
The amount of revenue, for the last fiscal year, is	$107,370.62
From the income of the United States Deposit Fund	165,000.00
Balance in the Treasury, on the 30th Sept., 1842.....	72,101.70
	$344,472.32
Amount of Common School dividends and miscellaneous expenses, during the year.	275,461.64
Balance in the Treasury, 30th Sept., 1843.....	$69,010.68

The capital of the Literature Fund is invested in State, bank, and insurance stocks, and amounts to.....	$268,990.57
To this fund also belongs 10,913 acres of land, which is unproductive, and is valued at.....	4,845.00
	$273,835.57
Received into the Treasury, during the fiscal year, for revenue.....	$18,852.43
Received from the income of the United States Deposit Fund.....	28,000.00
Balance in the Treasury, 30th Sept., 1842..	17,983.15
	$64,835.58
The dividends to academies, and contingent expenses paid out of the Treasury.....	47,309.98
Balance in the Treasury, 30th Sept., 1843.....	$17,525.60
The United States Deposit Fund is loaned on mortgage in the several counties, and on the 30th Sept. last amounted to.....	4,357,694.55
Amount received into the Treasury for revenue, during the year.....	$295,783.79
Balance in the Treasury, 30th Sept., 1842.	7,000.00
Charges on the revenue, for the year.....	315,142.76
Balance due the Treasury, 30th Sept., last.....	$12,358.97

The number of acres of land charged with taxes in 1842, was 27,176,934, valued at $504,254,029; and the personal estate at $116,595,233; making an aggregate of $620,676,-

346. On this aggregate was collected for State tax and county charges, $3,283,400.39, and for town charges $963,-087.39, amounting in all to $4,246,487.78; equal to nearly seven mills on every dollar of valuation.

Our colleges, academies and common schools, are performing the high functions, for which they were designed, in a manner creditable to those under whose supervision they are placed, and useful to the public. No interest of the State is entitled to a more favorable regard, or a greater share of attention at the hands of the legislature, than that of public instruction. The intellectual and moral culture of the six or seven hundred thousand children, who are speedily to succeed the generation now on the stage of active life, and to assume the duties and responsibilities, as well of government as of society, in all its departments, involves in its consequences the existence and destinies of the Republic itself, and cannot be neglected without danger to the vital interests of free institutions. The elementary education of the youth of the State, has attracted the attention and occupied a prominent position in the policy of the executive and legislative departments, from a very early period of our existence as a State. A perpetual fund, the revenue of which, for several years past, has secured an annual apportionment from the Treasury for the benefit of the common schools, of $110,000, has been specifically appropriated, by a provision of the Constitution,[d] to this object; and since the year 1838, the additional amount of $165,000 has annually been appropriated by the liberal and enlightened policy of the State, from the revenue of the United States Deposit Fund, to the same object, and to the procurement of common school libraries, in the several school districts of the State. An amount, in the aggregate, equal to these two sums ($275,000) is required to be annually raised upon the taxable property in the several towns; and the proceeds of this fund, augmented by nearly

[d] Const. 1821, art. 7, § 10.

an equal amount contributed by the inhabitants of the several districts on rate bills, by various local funds, and by sums voluntarily raised for this purpose by the inhabitants of the towns, are applied exclusively to the payment of the wages of competent and approved teachers, and to the purchase of suitable books for the school district libraries.

There are 10,860 organized school districts in the State; from 10,672 of which, reports have been received during the past year, pursuant to law. The number of children who have been under instruction in these schools, for a longer or shorter period, during the year embraced in the reports, exclusive of those in the city of New York, was 610,354; being an increase of upward of the thirty-nine thousand over the number in attendance during the preceding year, and considerably exceeding the whole number of children between the ages of 5 and 16, residing in the districts reported. The number under instruction in the several public schools in the city of New York, is about 40,000. The whole amount of public money received and expended in the several districts, from which reports were received, during the year ending on the date of the reports, was upwards of $660,000; of which $565,793.76 was appropriated to the payment of the wages of teachers; and about $95,000 for the purchase of suitable books for the several district libraries. The amount raised on rate-bills for teachers' wages, in addition to the public money applicable to that object was $509,376.97; making an aggregate of upwards of one million of dollars paid to teachers during the year, for the instruction of the youth in attendance on the common schools. The schools have been kept open during an average period of eight months, throughout the State. The number of volumes in the several school district libraries, is about 875,000.

The substitution of a single officer charged with the supervision of the common schools of each town, for the board of commissioners and inspectors, formerly existing,

in connection with the supervisory and appellate powers of the several county superintendents, as defined by the law of the last session, seems to have met with the general approbation and concurrence of the people. Conventions and associations of the friends of education have, during the past year, been held in almost every section of the State, indicating a concentration of interest, and a direction of effort to this great subject, which cannot fail of producing the most salutary results. The standard of qualification of teachers has been materially advanced; parents, and the people generally, manifest an increased interest in the welfare and prosperity of these elementary institutions of learning; and there are the most abundant reasons for anticipating a steady and continued improvement in all the elements of our extended system of common school education.

I am not aware that any farther legislative action is expected or desired at the present session in reference to this system. The frequent changes which have been made in the law during the past six years, have scarcely afforded the necessary opportunity for the inhabitants and officers of the several districts to become familiarized with the various duties devolved upon them; and it is in every respect desirable that the system as now established should be permitted without further innovation, to develop its excellencies, and its defects. The magnitude and variety of the interests involved, will, in my judgment, be best promoted in this as in all other departments of government, by permanent and stable legislation.[5]

The Superintendent of the Onondaga Salt Springs reports that during the past year, and up to the first of No-

[5] The normal school at Albany was established by chapter 311, passed May 7. It was placed under the joint supervision, management and government of the superintendent of common schools and the Regents of the University. Its object was "the instruction and practice of teachers of common schools in the science of education and in the art of teaching."

vember, there was manufactured 2,694,859 bushels of salt, of which 2,408,946 was fine, and 285,913 by solar evaporation; and he estimates that this amount will be increased to 3,300,000 bushels on the first of the present month. This exceeds the quantity manufactured in the year 1842 by 1,008.97 bushels.

The receipts to the 1st November, are stated at		$161,693.54
Disbursements for expenses.....	$25,875.43	
do for bounty under the law of 1843	39,565.38	
		65,440.81
Balance.....		$96,252.73

A large portion of the increased quantity of salt manufactured the last year has probably been occasioned by the law of the last session of the Legislature, which authorized the payment of a bounty on salt carried to points designated. It has also increased the amount of toll collected on the canal, but how it has affected the receipts in the aggregate, cannot perhaps be shown with precision; but it has doubtless exerted a salutary influence in reviving an important branch of industry, and added to the internal trade of the State.

Salt has been sent to Lafayette, the present termination of the Erie and Wabash canal; and it is estimated that, in the entire season of navigation, about 600,000 bushels, have reached tide water, and distributed to the cities of New York, Boston, Philadelphia, Baltimore and Richmond in Virginia.

Between the 15th of May and the 11th of November, 668,954 bushels of salt were sent to places which entitled it to a draw back, by way of bounty.

There was sent to tide water in 1839, 23,440 bushels of salt; in 1840, 13,040; in 1841, 90,935; in 1842, 156,500, and in 1843, 600,000.

The bounty paid on coal for the last year is $25,250.45; on lead, $2,267.53; on gypsum, $865.12; and on empty casks, $105.38, making, with the bounty paid on salt, an aggregate of $69,623.96.

It has been represented that several valuable changes have been made in the process of boiling, drying, and packing salt, and the character of the fine has doubtless been materially improved.

During the severe crisis through which the country has passed since 1834, there was perhaps no circumstance which operated with so much severity as the fluctuations and derangements in the currency, and the failure of banking institutions. The returning prosperity of the country is fortunately favored by the present apparently sound condition of the banks and the currency.

There are at present one hundred and forty banks in the State, and it appears by the quarterly returns to the Comptroller on the first of last November, that the capital amounts to $43,369,152, and the bills in circulation to $17,213,101.

The outstanding notes of the insolvent Safety Fund Banks, is stated at $579,353, which cannot be redeemed by contributions from the solvent banks until 1849. A part of this sum is doubtless in possession of those who have obtained it at its full amount, and the largest portion has probably gone into the hands of the brokers at a discount. The distant period at which these bills can be redeemed, renders them in the estimation of the holder of small amounts of little value, and there will be a strong inducement to part with them for a nominal sum.

It certainly is very unjust that the billholder, who has obtained them at par, should sustain this loss. It is supposed that a loan could be obtained on the credit of the Safety Fund, without pledging the faith of the State, to redeem the outstanding bills thus held. Such a course I should regard as just and proper, and I recommend that

the Comptroller be authorized to make a loan for that purpose on the terms mentioned. In my judgment the *bona fide* bill-holder who holds them at par value, is entitled to interest, and provision should be made to authorize its payment.

Fifty-seven associations and individual bankers are now doing business with a nominal capital of $5,139,776.50, upon which there have been issued circulating notes to the amount of $4,205,012, and there is in actual circulation, $3,547,352.

Their securities consist of the following stocks:

New York State stocks	$1,703,084.38
Stocks of other States, at market value	903,000.00
Cash on deposit	7,040.96
Bonds and mortgages	1,529,987.56
	$4,143,112.90

One banking association and five individual banks, have commenced operations during the past year, and have deposited New York State stocks amounting to $315,565; circulating notes issued on the above $315,565.

I deem it my duty to again call your attention to the militia system of this State, under the impression that it is entirely inadequate to the great purpose for which it is designed; that it operates unequally, and imposes a heavy and almost useless burden on the laboring portion of the people. A much larger part of this class are enrolled for militia service, than of the rich and opulent.

On a former occasion, I expressed the opinion that "trainings for the purpose of improvement in military science, have failed to accomplish that end, except in cities and villages, where meetings are frequent and convenient." I also recommended that trainings be abolished, excepting once by regiments annually, for the purpose of

enrollment and inspection. My reflections have convinced me of the correctness of the opinion then expressed. I now recommend that suitable inducements be given for the organization of uniform companies, battalions and regiments. If privates, after furnishing themselves with a proper uniform, should, in addition to their exemption from jury service and militia duty, after a certain period, except in case of war or insurrection, be furnished by the State with arms and equipments for the field and camp, under proper regulations, it is probable that a respectable portion of the infantry of this State would be organized into uniform corps.

The officers, non-commissioned officers, musicians and privates, of uniform companies should be required to meet as often as is provided by the present law. If the militia service should be diminished as proposed, there should be a corresponding reduction in the commutation paid by members of the Society of Friends.

Some of my predecessors had adopted the practice of loaning arms and equipments to uniform companies, on their furnishing adequate security for their preservation and safe return when required. I reluctantly followed this practice, not because I deemed it improper, but I supposed the authority to do this, very questionable. I cannot but hope that this practice will be sanctioned by law, as I regard it useful in encouraging the formation of uniform companies; and the arms, under proper regulations, would be as safely kept in the armories of companies as in the public arsenals, and at less expense to the State. By a law of Congress, each State is authorized to draw its quota of arms or ordnance from the national armory. It follows that there will be a large accumulation of arms to lie idle and useless in our arsenals, unless a law is passed authorizing them to be loaned to uniform companies.

I have personally examined the State arsenal in the city of New York, and consider it entirely insufficient to answer

the purpose for which it is designed. Most of the artillery is in an open shed, covered with boards. The main building is also too contracted, and is in a dilapidated condition; part of the enclosure is a board fence. The arsenal and its appendages are not in such a condition as renders the public property secure. There can, I think, be no doubt, that the public interest demands that the main building should be thoroughly repaired, if that is practicable, and some additions made; or that an entire new one should be erected. If the latter course is adopted, the question presents itself, whether it should not be located on a ten acre lot of land, owned by the State, lying about three miles from the City Hall.

The session laws of 1836, authorize the Commissioners of the Land Office to sell to the United States the land on Staten Island, comprising Forts Tompkins and Richmond. This would, in all respects, be a proper arrangement. The public defence requires that this should be the property of the United States, and the proceeds could be used in building a new arsenal. It is hoped that such an arrangement may be speedily consummated.[6]

It appears from the report of the Adjutant General, that the whole enrolled military force of the State, is one hundred and eighty-five thousand, seven hundred and fifty-eight. Of these, 162,481, are infantry, 12,247 artillery, 5,687 riflemen, 5,343 cavalry.

I am advised that a memorial will be presented at the present session, from the mechanics, in relation to State prison labor. This highly useful and respectable portion of our constituents, have repeatedly presented their grievances to the consideration of the Legislature. In giving efficacy and effect to our penitentiary system, as far as

[6] Provision for a new arsenal in New York was made by chapter 274, passed May 4. The expenditures for this purpose were to be made solely from proceeds of land on Staten Island sold to the United States for military purposes under an act passed in 1836.

practicable; while providing the means of punishment, of reformation, and the prevention of crime; while a just regard is had to the pecuniary interests of the State, as well as the moral condition and reasonable claims of the convicts; the labor and interests of our mechanics should be protected from interference, and their character from reproach, by every means consistent with the general welfare. The laws of 1835 and 1842, have doubtless afforded some relief; but they are regarded by the mechanics as inadequate. Some complaint is also made, that these laws have not been faithfully executed. I am satisfied that the present inspectors intend to enforce them with fidelity. Any practicable measure which would entirely remove the grievance complained of, by the mechanics, would, I am satisfied, be well received by our constituents.

But the subject is not without its difficulties. A penitentiary system that shall arrest, while it punishes crime, and that shall protect alike the interests of the State, and combine humanity with justice, and the rights, interests, and social condition of all the various divisions of society is, in many respects, yet a desideratum. Prisons we must have. Humanity, not less than considerations of public economy, seem to demand that the inmates should be put to some kind of labor. While mere experiment should be avoided, any farther modifications in the system that can afford relief, or render it more efficacious will be at all times worthy the attention of enlightened legislators.

It is supposed by the mechanics, that the plan of employing convicts in the mining districts of the State, is practicable; and it is the relief they now desire. The Commissioner who was appoined in pursuance of the act of 1842, to examine that subject, made an intelligent and interesting report to the last Legislature, and a bill was matured which passed the Assembly. This plan both with regard to the expense and its consequences, is highly important, and should not be entered upon until after it is well examined

in all its bearings. I have some doubts whether it should be adopted, without a farther and more thorough investigation. I will cheerfully co-operate with you in affording the relief asked for, in any manner consistent with the public interest.[7]

Aided by the politeness of the members of the Common Council of the city of New York, and the officers of several of the institutions, I was enabled, last July, to examine all the charitable and benevolent institutions in that city and its vicinity; and I take pleasure in communicating to you my entire conviction of their necessity and great usefulness. Whether we regard the valuable objects they are designed to accomplish, the judgment displayed in their internal arrangements, the good order with which they are conducted, they alike commend themselves to the favorable consideration of a liberal and benevolent people.

The citizens of New York have reason to feel proud of these institutions. They are enduring monuments of their charity, benevolence, intelligence and public spirit. They are, perhaps, not surpassed in any country. The Deaf and Dumb Asylum is producing highly gratifying and satisfactory results. The facility with which ideas are communicated, renders the mute intelligent, and fits him for business and most of the social relations of life. The arrangements for manual labor in several branches of mechanical pursuits, and for recreation, are well calculated to invigorate the body, promote health, and expand the native faculties of the mind.

The Institution for the Blind is imparting to that unfortunate class of our fellow beings, the benefits of educa-

[7] The prison legislation at this session, included chapter 152, passed April 13, which provided for a penitentiary in the county of Albany. Chapter 245, passed May 1, which authorized the establishment of a prison in the northern part of the State "for the purpose of employing state prison convicts in mining and the manufacture of iron, together with the manufacture of such articles from iron as are principally imported from foreign countries." This prison was established at Dannemora.

tion, the cultivation of the mind, and the knowledge of manufacturing many necessary articles. Several have gone out qualified for useful business pursuits, and providing a competency for themselves and families. The departments of education, including music and labor, are truly interesting, and merit the favorable regard of the philanthropist.

These institutions, in all their departments, appear to be conducted with skill, judgment and efficiency. The idea of teaching the deaf and the dumb to converse intelligently on almost any subject, and the blind in a measure to see, and thus qualifying them for useful business pursuits in life, is truly sublime; and I feel that I cannot in too strong terms commend these institutions to the fostering care of the government.

The quarantine establishment and Marine Hospital on Staten Island, is indispensable to the health of the city of New York and its vicinity, as connected with our foreign commerce. It has hitherto been under the direction of the Mayor and Health Commissioners, and sustained by a revenue derived from hospital moneys, consisting of fees and charges regulated by law. Previous to the last session of the Legislature, cabin passengers on vessels from foreign ports paid one dollar and fifty cents; steerage passengers, mates, sailors, or marines, one dollar; and all passengers in coasting vessels, twenty-five cents.

The net proceeds of the revenue collected constitutes the Mariner's Fund, and were originally directed to be invested and remain unappropriated to supply any deficiency which might arise. The session laws of 1829, appropriated annually $8,000 of the surplus to the treasurer of the society for the reformation of juvenile delinquents. The Session Laws of 1840 made a farther annual appropriation of $15,000, to aid the State Hospital of the city of New York, for the term of twenty-one years; and the Session Laws of 1841 made a farther annual appropriation of $1,500 to

each of the two incorporated dispensaries in said city for gratuitous medical aid to the indigent, and especially to foreigners arriving in the port of New York.

The Health Commissioners report that in six months in 1842, from the 15th May to the 15th November, the Hospital receipts amounted to	$66,013.00
The expenses during this period, and two quarterly payments to the Juvenile Delinquent Society, are stated at	23,236.00
Balance	$44,777.00
During the same period of time in 1843, the Hospital receipts amounted to	$13,949.50
Expenses	15,191.50
Deficit	$1,242.00

It will be seen by this statement that the act of the last session of the Legislature, reducing the tax on steerage passengers from one dollar to twenty-five cents, has affected the revenue on six months of last year, $26,331, and that no part of the appropriations contemplated from this fund can be paid.

To some extent the masters of vessels refuse to pay the tax on passengers, alleging that the law imposing it is unconstitutional. The Health Commissioner insisting, it has been paid, but under protest. The sum thus paid in 1841, '42 and '43, amounts to $30,412.10, which is withheld from the treasury, to indemnify the commissioner in case of recovery on a suit for payments under protest. He has deposited this sum with the Life and Trust Company of New York. The sum paid and under protest is accumulat-

ing, and cannot but be embarrassing to the officer who enforces collections under such circumstances. This I am aware is a matter not entirely within the control of the Legislature; but I suggest, whether it would not be proper to require the Commissioner to pay the money into the treasury, and the State to assume that indemnity which is clearly due to the officer.[8]

The State Lunatic Asylum at Utica, was opened for the reception of patients on the 16th of January, 1843, and up to the 30th of November last, a period of ten and a half months, there had been admitted two hundred and seventy-six patients; of these, eighty have been discharged, including fifty-three, who have recovered, leaving on the 30th of November, one hundred and ninety-six. It is a fact worthy of remark, that in so large a number of patients, there has not been a single case of suicide or serious accident.

By the United States census of 1840, it appears that there are two thousand three hundred and forty lunatics and idiots in the State, of whom seven hundred and thirty-nine were maintained at the public expense. The board of managers suppose, that with the existing means of classification, not more than two hundred and twenty-five patients can properly be received. In addition to the State institution at Utica, there is an asylum at Hudson, at Bloomingdale, near New York, and on Blackwell's Island. The latter is almost exclusively appropriated to the poor and destitute of the city of New York, and sustained at the expense of the city. The one at Hudson, is sustained by private aid; and that at Bloomingdale, derives some assistance from the State.

It is apparent that but a limited portion of this class of our fellow beings, can now be accommodated in asylums.

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[8] By chapter 316, passed May 7, the following fees were to be collected: from the master $1.50; for every cabin passenger $2; for each steerage passenger $.50, and for each mate and sailor $.50. Fees collected under protest were to be paid into the State treasury subject to any action which might be brought against the health commissioner for their recovery.

It is also certain, that before another year shall have closed, the State building at Utica will be filled to its utmost capacity, to accommodate patients, and the necessity of making further addition to it is obvious. I have, with some care, examined all these institutions in the State, excepting the one at Hudson, and was forcibly and favorably impressed with the internal arrangements, and the good order which prevailed in them.

In my observations, I was strongly impressed with the importance of arranging promenade grounds, well shaded, for the use of these unfortunate beings. It is, I believe, conceded, that such an arrangement is highly beneficial, and no institution of the kind should, in my opinion, be without it.

The deaf and dumb, the blind and the insane, are fit objects of public munificence; and I commend the institutions for the amelioration of their condition, to the attentive and favorable consideration of the legislature.[9]

There are in the Mount Pleasant penitentiary, seven hundred and ninety-eight male, and seventy-six female convicts.

Receipts for the year ending with the 30th September last, from Prison sources.....	$46,970.37
From the State Treasury.....	32,500.00
	$79,470.37
Expenditures for the same period.....	73,944.44
Balance	$5,525.93

[9] Chapter 203, passed April 26, authorized the erection of a lunatic asylum in the town of Flatbush, Kings County. It was to be a county institution. Chapter 337, passed May 7, appropriated $60,000 for the erection of two additional buildings at the Utica asylum.

It is represented that the earnings of the convicts for the current year, will exceed that of last year, about $20,000, and will probably be more than $50,000.

The female prison is regarded by the Inspectors as insufficient for the present number, which is constantly increasing. The hospital is confined to one small room, entirely inadequate for the purposes for which it must be used, and the Inspectors represent that an addition is necessary.

I recommend the sale of about sixty acres of land, purchased by the State, which is not necessarily connected with the prison, and is made to yield but a small revenue, compared with its value. The Inspectors of this prison will in their annual report, recommend several changes in the present system.

There were confined at the Auburn Penitentiary on the 21st of December last, 762 convicts.

Receipts for the year ending with the 30th September last, exclusive of a balance from the preceding year	$55,541.36
Expenditures during the same period	56,509.04
	$967.68
Balance on hand the preceding year	1,235.30
Balance on hand	$267.62
Earnings of the convicts	$47,240.89
Ordinary support of the convicts	49,322.25
Balance against the earnings	$2,081.36

It is stated that about sixty convicts are engaged in making repairs. The earnings of 1843 are less than those of 1842, by $10,745.52, which, it is represented, is occasioned by the law of 1842 in reference to state prison labor.

Since the first of January, 1843, there have been 1,479 convictions by courts of record; 685 for felony, and 794 for minor offences; to which should be added, 2,745 convictions by courts of special sessions, making an aggregate of 4,224.

It is a gratifying fact, that the people in every part of the State are manifesting a deeper interest in advancing the great cause of Agriculture. The last State Fair at Rochester, was more generally attended than any previous fair; and the exhibit of agricultural products, of animals, articles of domestic manufacture, and farming implements, was highly creditable. With a few exceptions, all the counties in the State have organized agricultural societies, and are doubtless making useful advances in collecting practical information in various matters connected with the tillage of the soil, economy in the application of labor, improvements in farming implements, and in the breed of animals. The officers of the State Society have entered into this matter with the proper spirit, and deserve credit for the zeal, intelligence and judgment with which the affairs of the society have been conducted.

The commercial revulsions and uncertainties of the last few years seem to have given an increased tendency to agricultural pursuits, and the vain and uncertain reliances on speculative wealth has impressively taught all classes that by labor alone can wealth be acquired. Agricultural as well as mechanical labor is taking its just and honorable position in the estimation of all classes of our fellow citizens.[10]

Labor, in all its departments, is to some extent depressed, and agricultural productions of every descrip-

[10] A state agricultural school was incorporated by chapter 261, passed May 4. By chapter 336, passed May 7, amending the State Agricultural law of 1841, the American Institute of the city of New York was required to report to the comptroller and to the executive committee of the State Agricultural Society in the same manner as the presidents of county agricultural societies.

tion command comparatively but a low price. Under such circumstances, there should be a corresponding reduction in the expenses of government. I recommend that the legal rate of interest be reduced to six per cent.

The Geological Survey and the publishing of the Natural History are in progress, and will be completed in 1844. The reports of L. C. Beck on Mineralogy; of L. Vanuxem, E. Emmons, W. W. Mather, and J. Hall, on Geology; four volumes of J. E. De Kay on Zoology, and one of J. Torrey on Botany, have been published; two volumes of J. E. De Kay, and one volume of J. Torrey on Botany, are in the hands of the printer; and there are in preparation one volume on Agriculture, and one volume on Palaeontology.

A contract has been made for printing, and for the engraving, prices more than twenty-five per cent below those heretofore paid. The services of two of the Geologists have been retained, to complete the departments on Agriculture and Palaeontology, to supply the deficiencies, to arrange the collections in the Geological Museum, to prepare a descriptive catalogue, and publish their reports. The aggregate of their compensation is stipulated at $1,500 each, without regard to the time employed. It will probably be necessary before the meeting of the next Legislature to make some permanent arrangement in relation to the Superintendents of the Geological Museum, which should be authorized by law.[11]

I am informed that petitions are extensively circulated, and favored by forwarders and navigators on the canals, for the passage of a law directing the locks to be closed on the Sabbath. Every moral and religious consideration favors a strict observance of the Holy Sabbath, and if it could be successfully enforced on the canals, there ought, in my opinion, to be no hesitation in granting the prayer of the petitioners.

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[11] Chapter 254, passed May 3, provided for the distribution of the volumes containing the natural history of the State.

I am aware, and I say it with pleasure, that the morals of those engaged in navigating the canals, have been much improved; and that closing the locks on the Sabbath, would be less objectionable now than formerly. This subject was frequently considered and discussed while I was a commissioner. It then occurred to me that the effect of such a measure would be to congregate, at different points on the canal, a large collection of boats, with their crews, and might lead to disorders and confusion, instead of a religious observance of the Sabbath. The efforts which have been made by the religious portion of the community, may have effected such a change, as to remove this apprehension. The subject is of great importance, and I commend it to your careful consideration; hoping, as I do, most sincerely, that if the proposition be adopted, it may produce the desired result.

The labors of the Agent appointed to procure and transcribe documents in Europe, relative to the Colonial History of this State, are drawing to a close. He has transmitted twenty-four volumes, in the French, and sixteen in the Dutch language, which are deposited in the Secretary's office.

The last Congress omitted to make the necessary provision to refund to General Jackson the fine inflicted upon him at New Orleans. I cannot but hope that this act of national justice will no longer be withheld. It should be among your first duties to call the attention of the National legislature to a subject in which I am persuaded the people feel a deep interest.[12]

WILLIAM C. BOUCK.

January 2d, 1844.

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12 The Legislature adopted a concurrent resolution in January, urging that the fine imposed on General Jackson, be refunded to him with interest. See special messages of January 23, and March 5, See also *ante* p. 44, note 14.

SPECIAL MESSAGES.

January 4. To the Senate: Transmitting the annual report of the Adjutant-General.

January 4. To the Assembly: Transmitting resolutions adopted by the Legislature of Connecticut relative to French spoliation claims, which arose prior to the treaty of 1800, but which had not yet been adjusted, and demanding an adjustment by the government of the United States, which it was asserted had become responsible for the payment thereof.

Also the following resolutions relative to the West Point Military Academy:

"*Whereas,* the National Military Academy at West Point, is generally obnoxious to the republican citizens of the United States — is aristocratic in its character and tendencies, and wholly different in all its features from what it was designed to be originally — therefore

Resolved, That it is wholly unnecessary to the government or people, as a means of filling the offices in the army, military instruction being now furnished to the youth of our country at institutions of learning, in different States of the Union, whose prosperity is only retarded by the overshadowing influence of a government monopoly.

Resolved, That the expense of maintaining the institution at West Point up to the year 1834, exceeded the sum of three millions of dollars, the average cost of educating each cadet being upwards of four thousand dollars, a sum worse than thrown away on the recipients of the government bounty, for it is believed it has no other effect than to create a military aristocracy in the country.

Resolved, That as the sense of this Assembly, the West Point Academy, supported and maintained at the expense of the people of the United States, ought to be abolished, and that our Senators in Congress be instructed, and our Representatives requested to oppose any further appropriations for the continuance of that Academy."

Also resolutions recommending such a revision of the tariff law as would be most conducive to the interests of all sections of the country, and deprecating "any laws

intended, or calculated to foster any one interest, by placing unjust burthens upon another."

January 5. To the Assembly: Transmitting resolutions adopted by the Legislature of South Carolina, opposing the assumption of state debts by the United States, or the perversion of the national domain for the same purpose, and favoring the annexation of Texas.

January 5. To the Assembly: Transmitting resolutions adopted by the Legislature of Connecticut, recommending the abolition of the franking privilege, and the reduction of letter postage.[13]

January 5. To the Assembly: Transmitting a petition presented by Frederick Colquhoun and others. The records do not contain this petition, nor indicate its subject.

January 16. To the Assembly: Transmitting the annual report of the inspector of liver oil, in the city of New York.

January 19. To the Assembly: Transmitting the proceedings of the Convention held in Albany in November, 1843, recommending a state convention for the purpose of considering amendments to the Constitution, and that the question of holding such a convention be submitted to the people.

January 23. To the Assembly: Transmitting resolutions adopted by the Legislature of Maine, relative to the fine imposed on General Jackson in 1815. [See note 12.]

January 24. To the Assembly: Transmitting the annual report of the Inspector General of Staves and Heading of the city of Albany.

January 24. To the Assembly: Transmitting resolutions adopted by the Legislature of Massachusetts, recommending that representatives and direct taxes be appor-

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13 The New York legislature adopted resolutions in January, 1844, favoring a reduction of letter postage, the abolition or better regulation of the franking privilege, and a more rigid economy in the postoffice department.

tioned among the States according to the number of free persons, excluding Indians not taxed.*

January 31. To the Assembly: Transmitting the annual report of the Commissary General.

March 2. To the Assembly: Transmitting resolutions adopted by the Legislature of Massachusetts, urging that the United States government adjust and pay the French spoliation claims.

March 5. To the Assembly: Transmitting resolutions adopted by the Legislature of New Hampshire, recommending that Congress refund the fine imposed on General Jackson in 1815. [See note 12.]

March 6. To the Assembly: Transmitting resolutions adopted by the Legislature of Virginia, protesting against the Massachusetts recommendation to amend the federal Constitution so as to apportion representatives and taxes according to the number of free persons in each State.

March 15. To the Assembly: Transmitting resolutions adopted by the Legislature of Mississippi, favoring the annexation of Texas, and declaring it incompatible with the best interests of the United States that any foreign power should acquire possession of that republic, or secure a commanding influence in its affairs, and that such interference by a foreign power should be a sufficient cause for war.

March 23. To the Assembly: Transmitting resolutions adopted by the Legislature of Massachusetts, opposing the annexation of Texas, and declaring that the power to unite an independent foreign state with the United States, is not among the powers delegated to the general government by the Constitution of the United States.

March 27. To the Assembly: Transmitting resolutions adopted by the Legislature of Massachusetts, reiterating its

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*U. S. Const. art. 1, § 2, clause 3; see 14th Am.

demand for the proposed amendment to the federal constitution relative to representation and taxes, as set forth in the special message of January 24.

April 13. To the Assembly: Transmitting resolutions adopted by the Legislature of Kentucky, disapproving the Massachusetts proposition, relative to representatives and direct taxes. Also resolutions adopted by the Legislature of Rhode Island, protesting against the right of Congress to inquire whether the late charter government of Rhode Island was republican in form or whether the so-called "people's constitution" of Rhode Island was the lawful constitution of the State, it being alleged that the legitimate constitution was legally, peaceably and freely adopted by the people in 1842, asserting the loyalty of the people of the State, and declaring that they would insist upon the exclusive right to govern themselves and change their constitution in their own way.

April 15. To the Assembly: Transmitting resolutions adopted by the Legislature of Maryland, protesting against the Massachusetts proposition relative to representation and direct taxes.

April 25. To the Assembly: Transmitting resolutions adopted by the Legislature of Georgia, protesting against the repudiation of State debts.

May 7. The Legislature adjourned without day.

Silas Meyjes

SILAS WRIGHT, Governor.

ANNUAL MESSAGE.

FELLOW CITIZENS.— The Constitution makes it my duty to communicate to you the condition of the State, and to recommend such matters for your consideration as I shall judge expedient.

The great and diversified interests of the State demanding legislative supervision, protection and aid, impose a vast responsibility upon the Legislature; while, to present their condition so fully to you as to facilitate your labors, accompanied with recommendations calculated to lead you to wise and just conclusions, is a task not less responsible. It is one upon which I enter with diffidence, and yet I make the attempt cheerfully, feeling that the duty has been assigned to me by a constituency always indulgent to honest effort and upright intention, and which never demands from a public servant more than, thus aided and directed, he is able to perform.

The great and leading subjects of legislation are so intimately connected with the state of our finances, as to render it proper to examine first the financial condition of the State.

Our revenues are large, and should be ample for a State having only the expenses of its internal government to meet. If they prove unequal to our necessities, the inference will be almost unavoidable that errors now exist, or have existed, in our financial policy and legislation.

A general view of the current annual revenues of the State, taken together, according to the receipts of the fiscal

year, ending on the 30th day of September last, is as follows:

The total amount of receipts on account of the General Fund including the whole of the State tax of one mill on the dollar, and deducting the sum received for temporary loans, was	$1,073,249.01
The entire revenues of the Canal Fund, including all the receipts for tolls, water rents and interest, for all the canals, were	2,350,615.94
The revenues of the School Fund proper, were.	133,826.51
The revenues of the Literature Fund, were...	18,490.34
The revenues of the United States Deposit Fund, after deducting $106,412.55, transferred from revenue to capital, were	237,304.25
Making a total of	$3,813,486.05

Various other funds which produce revenue, in the form of interest upon moneys invested, will be found mentioned in the fiscal reports, such as the bank safety fund, various special sinking funds, the Mariners' Fund, and the like, all of which are in their character, trusts in the hands of the State for specified objects, in no way connected with the revenues and expenditures of the State government.

The revenues before enumerated are those which enter into the annual expenditures of the State, and constitute the means for those expenditures, and they are the whole of such means annual in their nature, as ascertained by the actual receipts of the last fiscal year. Some portions of these revenues, with the funds from which they are derived, are pledged by the Constitution to particular objects, and are beyond the power of the Legislature for any other application.[a] Such is the entire capital of the Common

[a] Const. 1821, art. 7, § 10.

School fund proper, and its revenues. The capital is made "a perpetual fund, the interest of which shall be inviolably appropriated and applied to the support of common schools throughout this State." So the tolls collected upon the Erie and Champlain canals, with the fund properly denominated the Canal Fund, are constitutionally pledged for the payment of the interest and the redemption of the principal of the debt contracted for the construction of those canals. Other of these revenues are by permanent laws, appropriated to specific objects. Such is the Literature Fund, the revenues of which are expended in aid of the incorporated acadamies of the State. The revenues of the United States Deposit Fund also, are by a permanent law, appropriated to objects of education or specified charities; and whatever changes may be thought expedient or just, in the distribution of the fund to the specified objects, it is not supposed that a diversion of these revenues to any other general class of objects of expenditure will be contemplated.

This presentation of all the revenues of the State collectively, with a brief explanation as to the portions specifically set apart by the Constitution or the laws, for exclusive application to particular objects, it is hoped may enable those not minutely acquainted with our financial arrangements the better to understand, upon a separation of the various parts, how far means are in fact within the disposition of the Legislature for general and miscellaneous objects of expenditure.

The entire amount of revenue from the five funds as before presented, is		$3,813,486.05
Deduct from that aggregate the revenues of the School Fund proper, constitutionally pledged to the support of common schools	$133,826.51	

The revenue of the Literature Fund appropriated by law in aid of academies	$18,490.34	
The revenues of the United States Deposit Fund, appropriated by law to common schools, academies, colleges and other purposes of education, and the New York Eye Infirmary	237,304.25	
		$389,621.10
And there will remain		$3,423,864.95
This balance comprises the revenues of the General Fund and of the Canal Fund, embracing all the revenues from all the canals, as well as from the Canal Fund proper. The part of this sum comprising the revenues of the General Fund, as will be seen is		$1,073,249.01
This, however, embraces the whole of the State tax, while by the first section of the "Act to provide for paying the debt and preserving the credit of the State," passed 29th March, 1842, one-half of it, after the year 1842, is to be paid to the Commissioners of the Canal Fund for the use of the canals; and there was so paid, in pursuance of this provision, during the last fiscal year, the sum of		278,197.56
Thus leaving to these revenues applicable to the calls upon the General Fund, the sum of		$795,051.45

The payments made from the treasury, charge-able to this fund, during the last fiscal year, excluding the payments on account of tem-porary loans, and also the payment to the Canal Fund of half of the mill tax, as before stated, were		$1,003,753.43
		$208,701.98

Thus showing that the receipts into the treasury on account of the General Fund, from all sources, are less by $208,701.98, than the sums charged upon the same fund and paid from the treasury for the last fiscal year.

This is a comparison of the whole amount of the annual revenues of the General Fund, including all receipts of a miscellaneous character, with the annual permanent charges upon it, and also all payments authorized by special acts of the Legislature, as well as temporary and miscellaneous expenses.

There was an apparent balance in the treasury at the close of the fiscal year of $99,737.26, which, so far as it is available, would diminish the deficit before stated in the receipts of the General Fund. This balance, however, included the sum of $84,358.15, paid to this State out of the proceeds of the sales of the public lands of the United States under a law of Congress, and placed in the treasury by the Governor, to whom the payment was made; but which has never been brought into the accounts of the General Fund, or any other of the funds of the State, because the Legislature has directed no disposition and authorized no application of the money. It has remained in bank by a special contract with the Treasurer, at a stipulated interest. If this sum be deducted from the above balance in the treasury, there will remain only $15,379.11, as the real available balance, applicable to demands against

the General Fund. If this sum be deducted from $208,-701.98, the deficit in the revenues of the General Fund as before stated, it still leaves a deficit of $193,322.87.

By the 5th section of the "Act to regulate the accounts between certain funds belonging to this State," passed 25th May, 1841, the Commissioners of the Canal Fund are directed to pay to the treasury, on or before the 30th day of September in every year, from the canal revenues, the sum of $200,000. Only one-half of this sum has been paid for the use of the General Fund for the last year, the other half having been withheld to make up losses in the fund pledged for the payment of the Erie and Champlain Canal debt, occasioned by the insolvency of certain banks which had loans from the Canal Fund. Hereafter the whole sum of $200,000 will be annually paid from the surplus revenues of the Canal Fund for the use of the General Fund. But, with the whole of this appropriation, one-half of the State tax, and all its revenues, permanent and miscellaneous, the General Fund, as is shown by the foregoing statement, is wholly inadequate to meet the annual demands upon it.

A further and most important consideration connected with this fund, is the heavy debt charged upon it. This debt is $5,634,507.68. This is the amount of the positive, unconditional debt charged upon the fund, the annual interest upon which is $310,499.69, and comprises one of the heaviest items of permanent charge upon its revenues. The debt has been increased by the sum of $211,092.35, within the last fiscal year; thus showing that the revenues of the fund, with but half of the mill tax, so far from presenting a surplus beyond the annual expenses chargeable upon the fund, are in fact deficient, and that the debt continues to augment. More than three-fifths of this debt was contracted by loans of the credit of the State to railroad incorporations, which have wholly failed, and thrown the amount upon the General Fund. Without the debt, the present revenues of the fund would be ample to meet the

charges upon it, and would authorize the Legislature moderately to increase those charges when the public interests should be found to require it; but with it, and its constantly accruing interest, the charges upon the fund must be diminished, or its revenues increased, to prevent a constant annual augmentation of the debt.

True economy, as well as sound policy, require the arrest of this process. A portion of the revenues of this fund, more than equal to all the aid it derives from the mill tax, is now annually consumed in the payment of interest alone upon this increasing debt. Such an expenditure, while it makes taxation perpetual, works no public benefit. The money passes from the pockets of the citizens, through the hands of the tax collector, to the pocket of the public creditor, with the loss to the former of the expenses of collection, only that the process may be repeated with the same loss, as regularly as time shall bring around the seasons; and still the demand is undiminished, the weight of the load unmitigated. To reverse this action is the only remedy for the evil. The revenues should be brought to meet the annual expenditures, and leave a balance to wear upon the debt, and then each payment of the tax will bring with it hope and encouragement. The third subdivision of section two of the act imposing this tax, looks to its discontinuance after the present year, through an ability in the revenues of the fund to meet and extinguish the debt without its further aid; but that expectation cannot be realized, while the debt is increasing against the power of these revenues, the tax included.

There is also a contingent debt hanging over this fund, amounting to $1,920,000. This is for loans of the credit of the State to canal and railroad incorporations, which have hitherto fulfilled their obligations, by making the payments of interest. It is hoped they will be prepared for the reimbursement of the principal at the day. This contingent liability presents another reason for strengthening the con-

dition of the General Fund, and taking prompt measures for the gradual extinguishment of its present increasing debt.

After deducting the revenues of the School, Literature, and United States Deposit funds, from the aggregate amount of the revenues of the five funds, the balance remaining was	$3,423,864.95
Those of the General Fund having been examined, may now be separated. They are	1,073,249.01
And the revenues of the Canal Fund will remain	$2,350,615.94
The expenses charged upon and paid out of the revenues of this fund, for the fiscal year, were	1,777,970.59
Leaving a surplus, over and above the expenses chargeable upon the canals, and the Canal Fund, for the fiscal year, of	$572,645.35

Included in these expenses are the $100,000 paid to the Treasurer for the use of the General Fund, and the $100,000 paid on account of losses of the fund pledged for the payment of the canal debt, and $1,031,123.16, for interest upon that debt, making together the sum of $1,231,123.16, and leaving $546,664.86, as the expenses of the canals, including the sums refunded on tolls, and for rents of surplus water from the Oswego Canal. The above charge for interest does not include the interest upon the balance unpaid of the old Erie and Champlain Canal debt, that being met by the interest upon the funds set apart and invested for the payment thereof.

By the twelfth section of the act of 1842, "the surplus canal revenue, after paying all just canal current expenses

and the interest on the canal debt, and the payment aforesaid to the General Fund, shall, to an amount at least equal to one-third of the interest of the canal debt remaining unpaid, be sacredly devoted and applied as a sinking fund to the redemption of the canal debt now existing and authorized by this act, and shall not be diverted from that object to any other purpose whatsoever."

Such is the language of this law, and such the express pledge it contains, touching the surplus of the canal revenues of the last fiscal year. If the amount of annual interest on the canal debt, as it existed at the close of the fiscal year, $1,126,397.90, be the correct amount from which to measure the extent of the pledge, and if it be construed with technical strictness to extend no farther than the one third of that interest, then the portion of this surplus to pass to the sinking fund is $375,465.96, leaving a surplus for the last fiscal year beyond the amount pledged to the Sinking Fund of $197,179.39.

The Canal Fund, however, as well as the General Fund, are burdened with heavy debt, and it remains to be seen, whether the obligations of this debt must not as effectually control the discretion of the Legislature in the application of this surplus money, as any pledge which the law of 1842 could have imposed upon it. The interest of this debt, it is true, is carefully provided for by that law. This, without any provision for the extinction of the principal, may be satisfactory to some, but such is not my view of the rule which binds the faith and honor of the State. I know of no obligation to meet the accruing interest, which does not demand, with equal force, the payment of the principal as it falls due; and so far as the means are possessed, the failure to apply them, in the one case, appears to me to be as much a breach of the faith pledged by the contract, as in the other. Suppose the creditor consent to the postponement of the payment of his principal money. Between individuals acting for themselves as principals, such consent

would authorize the diversion of the funds; but if the agent of the debtor were dealing with the creditor in person, would such consent justify the agent, without the sanction of his principal, in the diversion of the funds placed in his hands to pay the debt? And is not this our case? Are we not the mere agents of the people in this matter? They have permitted debts to be contracted upon their credit, and at their risk, to construct the present State canals. The moneys in our hands are the proceeds of the investments thus made, and came from the very source upon which they relied to pay these debts and save them from oppressive taxation. Have we the right, as faithful agents, without the consent of our principals, even though their creditors should consent to divert their funds to other objects, and continue the debt upon them? I strongly incline to the opinion that we have not.

By a statement of the canal debt, furnished by the canal department, it appears that the whole amount unpaid on the 30th day of September last, was $20,713,905.58. This includes the old Erie and Champlain Canal debt of $1,380,-250.35, for the payment of which, funds have been already set apart, believed to be more than sufficient to cancel it. The portion of the funds so set apart, considered available, amounts to $1,496,306.45, being $116,056.10 beyond the principal of the debt to be paid, and probably more than sufficient to meet the principal and interest. I am informed by the Commissioners of the Canal Fund, that the holders of this old stock have been personally notified that the money is ready for the redemption of the principal, and that payment will be made on the day it falls due. It is the intention of the Commissioners to place the funds in the bank where the stock is transferable and where the interest is paid, before the day of payment, which is the first day of July next, and the notice given to the holders informs them that interest will cease on that day.

This is the last of the canal debt, upon which the constitutional pledge rests, and it may become material, in the course of your legislation, to consider whether, when these steps shall have been taken, that pledge may not be considered, both in principle and in fact, fully redeemed.[b]

The statement of the canal debt, before referred to, shows that the whole amount of canal stock redeemable in July and January next, is $3,742,626.01. This includes the sum of $1,380,090.35 of the old debt, the redemption of which is provided for in the manner above specified, leaving $2,362,535.66, reimbursable in January 1846, for the payment of which the moneys are not yet fully provided.

The Sinking Fund provided for by the twelfth section of the law of 1842, has received the contributions required to be made to it, so far as the canal revenues have furnished the means, although it is believed that the surplus for the years 1842 and 1843 did not equal the one-third of the accruing interest upon the debt.

Carrying the whole surplus of the last year to that fund, with the whole $278,197.56 paid from the treasury as the proceeds of the State tax, and the fund, including the accumulation of interest computed at five per cent, amounts to $1,195,102.01, an aggregate sum more than equal to one-third of the interest on the debt for the last three years, and is supposed to be available to meet the payment of that amount of the stocks before alluded to. This will leave $1,167,433.65 unprovided for, any farther than there may be a surplus of the funds set apart to redeem the old debt, which can be applied to this object, and the accruing canal revenues of the current year may yield a surplus also thus applicable.

The third subdivision of the eleventh section of the act of 1842 provides that the contributions from the State tax to the Canal Fund shall cease, whenever the annual revenue

[b] Const. 1821, art. 7, § 10.

from the State canals, ascertained in the manner pointed out by that act, shall exceed the expenditures upon the canals, the interest upon the canal debt, and the payment to be made to the General Fund, by more than one-third in amount of the annual interest upon the canal debt. The revenues of the last fiscal year have produced that excess, as has been before seen, and have surpassed it; and consequently the collection of the entire mill tax, for the current year, must enure to the benefit of the general fund, and after the current year, the collection of that half of the tax, imposed for the use of the canals, is to cease. Nothing further, therefore, is to be realized from this source, to aid in the redemption of the canal stocks.

If this be a correct representation of the means and liabilities of the Canal Fund, for the current year, there would seem to be an end to discussion as to the appropriation of these means to any other object than to the payment of the debt, unless the payment is to be postponed. I have already expressed my views in relation to such a diversion; and I am constrained to believe that, whether considered as a question of principle, or one of economy, the policy would be equally unsound.

Our canal revenues are very large, and nothing but the enormous debt charged upon them, keeps the fund so poor as to require the aid of direct taxation to meet its liabilities. Separate from the old debt, more than one million annually of these revenues are consumed in the payment of interest alone. This must be a constant drain upon the fund, and nothing but the payment of the debt can arrest the corroding malady. Postponement can promise no relief, and may bring accumulated dangers.

A departure from the sound rule of using our means rather than our credit, has brought this debt upon our favorite and favored fund. The only necessarily dangerous stage in our canal policy was passed, when the Erie and Champlain canals were completed and became pro-

ductive; and a sound and wise financial policy, faithful administration, and most fortunately located canals, carried us through that stage with safety. Up to that period, borrowing was necessarily the principal resource, and some of the richest revenues of the State were set apart to meet the payments of interest, while the Constitution of the State was made to pledge the investments, together with these revenues, for the return of the principal. And even under all these safeguards, loans were made with moderation and the works were prosecuted in a measured pace. After they were completed, payment of the debt became the object of solicitude, and means were accumulated and the stocks purchased and cancelled, in advance of their falling due, when they could be obtained on reasonable terms.

In the meantime, other canals were constructed, but the expenditures were kept within the limits of the canal revenues, without losing sight of ample provision for the payment of the existing debts. As an evidence of this, before the policy was changed, the payments made and the moneys accumulated applicable to those payments, had left less than five millions of the canal debt unprovided for. The surplus revenues of the canals were accomplishing much annually towards the construction of new canals, and the enlargement and improvement of the old, and still yielding their annual contributions to a sinking fund, intended to remove the small remaining debt, as the principal should fall due.

In this state of things, a change of policy came over us, which was based upon a new financial rule of action. The existing revenues were looked upon merely as a fund to meet the interest upon further loans; it being assumed as safe to depend upon anticipated improvements of those revenues for the payment of the principal of the debts. Indeed, it is believed the principle was carried even farther, and that anticipated revenues were depended

upon, to meet accumulations of interest, beyond the power of the existing revenues, as well as to cover the payments of principal.

The reflection does not seem to have occurred to the authors of this new financial policy, that any disappointment in their anticipations of improved revenues, must give their system a shock it could not survive, by imposing a tax upon the people, or disappointment and loss upon the public creditors, either of which alternatives could not fail to arrest the further accumulation of debt upon such a basis. It would seem also to have been overlooked, that the money lender could draw as accurate a distinction as themselves between their means and their anticipations, and that when the means should have been exhausted, the anticipations might not command the required capital even to test their soundness or their fallacy.

In any event, loans were obtained in unexampled amounts, until the limit of the existing revenues was reached, when the public credit wholly failed them. Works of internal improvement were prosecuted upon a scale so extensive as to bring the State into competition with itself, and the wages of labor and the cost of subsistence upon one contract were enhanced by the demand for labor and subsistence upon another. An arrest of the means by a failure of the credit of the State put an end to this strife, and to the new public works together, and when a return to the old and safe policy was attempted, it was found that a large proportion of the moneys which had been accumulated to meet the old canal debt, were rendered unavailable by having been loaned to banks which could not pay; that the accruing surplus of the canal revenues, beyond the current annual expenses, was covered by claims for interest; that the General Fund must sink under the accumulated and accumulating demands upon it, for interest upon public stocks loaned to railroad companies which had failed, or were in a failing condition;

that temporary loans had been made to the amount of more than a million and a half, which were impending over the treasury, without the means of payment, and that contractors and laborers upon the public works were without pay, or with the unmarketable stocks of the State in the place of the money to which their contracts entitled them.

The issue was therefore present and unavoidable. The people must be taxed, or the public creditors must suffer loss, and the public stocks be dishonored. A resort to the credit of the State was made unavoidable to meet these urgent and instant demands, the accruing interest upon the enlarged debt, and to put the canals in repair for the approaching season of navigation. Public distrust had taken the place of public confidence, and a substitution of the paying for the borrowing policy was made indispensable, before a resort to credit could command a response in capital.

This was done by the act of 1842. The effect of this measure was almost electric, and was felt not merely throughout the State, but throughout the Union. Under its solemn assurances money was obtained upon loan to relieve the pressing necessities of the public treasury, and to preserve the public faith and honor, or by a prompt payment, at the specie value, of the instalments of interest upon the public securities. From this time the credit of the State rose rapidly, and soon attained the par of money; and by the scrupulous adherence to the policy and the pledges of that law which has characterized our subsequent legislation, it has now reached its accustomed honorable elevation.

We must not blind ourselves to the fact, however, that the recent disasters in the affairs of the public and private credits, and especially connected with the credits of several states of the Union, have caused a distrust, a watchfulness, a sensitiveness, in reference to State credits,

which will not permit of hazardous experiments. Our practice has been to pay at the day, both principal and interest, and such is the theory of finance upon which we have restored the credit of the State. If that theory shall be abandoned in practice, and the appropriate funds to pay the principal of the existing canal debt as it falls due, shall be diverted to other objects of expenditure, and those payments be indefinitely postponed, can we hope that the credit of the State will remain unshaken? Have we any right to expect that the effect will be other than that so recently witnessed, when the attempt was made to substitute anticipated revenues for real means and a disposition to apply them to maintain the public faith.

I am well aware that objects of expenditure, of great and extended public interest, will be pressed upon your attention, and will press themselves upon the minds and feelings of those whose immediate constituencies have a more direct interest in their resumption and completion. The Erie Canal enlargement, the Genesee Valley Canal, and the Black River Canal, are prominent among these objects, and deeply enlist the feelings and interests of large and worthy portions of our fellow citizens. It would certainly be a more grateful task to recommend a compliance with these earnest wishes, than to feel impelled by a sense of public duty, to point out the necessity of their present disappointment. Yet we must not forget, when acting upon these great questions, that the interests of the citizens of the whole State are committed to our charge, and that a measure which would be wrong towards them as a mass, cannot be right, because portions of the mass would be benefited by it. And it would certainly be wrong to our citizens as a whole, again to depress, or even to hazard, the credit of the State, by a diversion of any portion of the canal revenues required to pay the existing debt, and preserve the public faith. It would be wrong to

them to disregard the letter or spirit of the pledges of the law of 1842, and thus incur the risk of a necessity for increased or longer continued taxation.

Would such a policy be wise even in regard to these improvements, and the citizens more immediately interested in them? The surplus which as yet can be so diverted, without an express infraction of the provisions of the law of 1842, is entirely too inconsiderable to make any useful progress with the works, and especially so, if it must be divided among them. And it is not likely that those interested in either will consent that the money shall be diverted from the debt and also from their favorite improvement. In the meantime, the accumulations of interest upon the present large debt are exhausting the revenues which should be applied to the construction of further improvements, and nothing but a payment of the debt can discharge them from this profitless consumption. Will it not be more wise to hasten the payment of this debt, and thus discharge these revenues from their incumbrances, and place at the disposal of the Legislature some ten or twelve hundred thousand dollars per annum, without a resort to credit, without a loss of interest, and without the danger of increased taxation? The recent experiment of hastening our public works has certainly shown us that such efforts may be unsuccessful, even in relation to enterprises undertaken by States as powerful as ours, and with a credit as strong and means as ample as those we possessed at the time our former prudent policy was abandoned.

Your immediate predecessors originated, according to the forms and requirements of the Constitution,[c] various amendments to that instrument, which were duly published previous to the late election. These propositions will necessarily call for your further action in the constitutional form. Two of them bear particular relation to

[c] Const. 1821, art 8.

our financial affairs, and are therefore appropriate subjects for consideration in connection with the present discussion.

The first of these amendments proposes to give a constitutional sanction to the pledges and guaranties of the act of 1842. The second limits and restrains the power of the Legislature, by requiring that laws authorizing loans of money upon the credit of the State, except within the narrow limit of one million of dollars in the aggregate, or for the specified objects of repelling invasion, or suppressing insurrection, shall be submitted to the people and receive their express sanction, to give them the force of law. This amendment further provides that every such law shall propose a loan for a single object or work only, to be distinctly specified therein; shall impose and provide for the collection of a direct annual tax to pay the interest upon the loan proposed, as it falls due, and also to pay and discharge the principal sum borrowed, within the period of eighteen years from the time the debt is contracted; shall be irrepealable until the debt, interest and principal, shall have been fully paid and discharged; and that the moneys loaned under it shall be applied to the object or work named in the law, and to no other purpose whatever. It further provides that when a debt shall be contracted to repel invasion, or suppress insurrection, the moneys borrowed shall be applied to those objects, or to the repayment of the debt so contracted, and to no other purpose whatever.

The recent free use of the public credit, in over-hastening loans for State works, and in lending to irresponsible corporations, the embarrassed condition of our finances, and the consequent call for direct taxation to restore public confidence, have doubtless given rise to these proposed amendments, as they did give rise to the law of 1842, which the first amendment proposes to surround by a constitutional sanction.

The manner in which that legislation was received by the people, although imposing a direct tax upon all their taxable property as its first provision, the salutary influences it so promptly exerted upon public and private credit, and the triumphant manner in which its provisions and policy have been sustained by the people, whenever the wisdom and soundness of either have been brought in issue at any subsequent election, present a more forcible argument in favor of the first of these amendments, than any it would be in my power to offer.

The second is manifestly intended, as it appears to me to be wisely framed, to secure the people against a like hazard and loss for the future, and their credit from further over use and consequent depression. The provision requiring each law to provide for a loan for a single object only, is necessary to enable the freeman at the polls to form a distinct and satisfactory opinion upon the propriety of the contemplated expenditure, and to express that opinion in an intelligible and unequivocal manner. It strikes also effectually at one of the most universal causes of complaint and dissatisfaction growing out of the recent appropriations for our works of internal improvement. I refer to the charge, whether well or ill founded, that combinations of local interests are formed, on the part of the friends of different works having no natural or necessary connection with each other, and that, in this way, loans are authorized and appropriations secured, which the intrinsic merits and strength of no single work in the combination could command.

This amendment cannot fail to have a strong tendency also to mitigate, or entirely remove, another practical evil too often experienced in connection with this legislation. The Legislature is always composed of members of the two great political parties which are ever striving for the mastery. The majority in the Legislature is very naturally, and to a great extent very justly, held responsible

for the action and measures of the body. The minority will not be over solicitous to diminish this responsibility, resting, as it does, upon their political opponents, and may at some times, at least as far as a sense of public duty will permit, be willing to increase it. To such a minority these applications for local improvements and expenditures present a temptation which the journals of the Legislature will show are not always resisted. The interests of a section of the State are involved. The application is pressed with the earnestness and feeling which personal and local interests are too likely to impart on such occasions. The majority is looked to as holding the power to make the grant desired, and the majority, prima facie at least, is responsible for the action. If defeat be certain, the minority, by its favorable vote, may conciliate and gain the interest, without hazard or injury to the public treasury. If the majority be divided, and the vote of the minority hold the power, the same opportunity is presented to gain the party advantage by the favorable vote, while the responsibility of the measure, when adopted, presumptively rests upon the majority, and may, at the worst, be made matter of debate between the political parties.

I intend no invidious reference to individuals, to political parties, or to particular measures, by these remarks. My sole object is to point out what I believe to be an evil tendency and temptation, connected with legislation of this character, and to refer to this provision of the proposed constitutional amendments, as eminently calculated to remove them. If it be adopted, no contest can take place offering party advantage, as to the objects of expenditure to be embraced in any proposed law, or as to the amount which it shall appropriate; and every member will be required to meet and justify his own vote before his own constituents, whether he belongs to the majority or minority of the body; because those constituents will be called upon directly to vote upon the same question.

The requirement that a tax shall be imposed by every such law, sufficient to meet the interest upon the loan to be made, is but preserving the same safe precaution which marked our early legislation of this character. Then the State possessed rich revenues which it could spare, and they, together with certain specified taxes, were pledged. Now, as has been seen, all its revenues applicable to these objects, are incumbered to their full extent by existing debts, and the only pledge it can make to fortify and sustain its credit, is the one here proposed. This the citizen should understand at the time he votes upon such a law, and to make it certain that he will understand it, he should be called to vote for the tax as well as the loan. It may appear to some as going too far, to require that the tax should be sufficient to redeem the principal of the debts within a specified time, as well as to pay the current interest. If the object of expenditure be one not expected to yield revenue, then the provision is clearly right and absolutely necessary. If it be one from which a return of revenue is anticipated, and that anticipation be disappointed, as has been the case with most of the lateral canals, then the provision is equally right and necessary. And if the anticipated revenue be realized, then the debt will be sooner paid, and the tax imposed be but partially required, or collected; while, in any event, the people will be protected from a load of unexpected debt and unforeseen taxation.

The pledge contained in the Constitution to secure the payment of the old canal debt, and protect the citizens and the property of the State from taxation for that purpose, is to be completely fulfilled, and practically, if not technically discharged during the present year.[d] If that pledge was wise, it would seem to be equally as wise that another efficient barrier should be interposed between the taxpayers of the State, and the unrestrained power of the

[d] Const. 1821, art. 7, § 10.

Legislature to contract debts upon their credit and at their risk. That this power may be abused, we now know. That it has been abused, the people now feel; and it cannot be a matter of surprise if they shall be found to demand protection against future abuses.

I am certainly as far from entertaining the disposition, as I am from claiming the right, to pronounce to, or for you, what is public opinion upon any subject; but so far as my observation and means of information enable me to speak, these proposed amendments have been very broadly and fully discussed before the people during the late canvass, have taken deep hold of the public mind, and have been received with strong favor. It is not given to you to incorporate the provisions in, and make them a part of, our Constitution. This is wisely left for the people themselves. Your action, if favorable, can only prepare the amendments for their final action; and the reflection that without your favorable co-operation, the people cannot, in the manner pointed out by the Constitution, express their will and choice upon these to them very important propositions, will not fail to incline towards that reference the minds of all whose judgments do not decidedly reject the proposed amendments.

Our present Constitution has remained the fundamental law for nearly a quarter of a century, several amendments having been in that time adopted, in conformity with the provision of that instrument for its own amendment. Hitherto that provision has satisfied the public mind, and led to the amendments demanded by the popular feeling and judgment. I consider it extremely desirable that this should continue to be found practically true, and that such a degree of harmony shall at all times prevail between the popular will and the legislative action, in reference to further proposed amendments, as shall supersede demands for constitutional change in any other form. It is a matter of public notoriety, that a portion of our citizens have, for

some time thought, and still think, that a call for a convention to revise our Constitution, has already become expedient. I have been induced to believe that the desire for amendments upon the very points embraced in those now under discussion, and perhaps upon one or two others in reference to which propositions are also now before you, has excited this feeling and given it its present strength. I know that a further limitation of the power of the Executive over appointments to office, is also a subject upon which many desire an amendment of the Constitution. Speaking personally, I hope I may be believed when I say that any curtailment in that branch of the executive powers and duties, while I am to be honored with the exercise of these high functions, would be most grateful to me; and I am prepared further to say, that I believe many of the officers now appointed upon the nomination of the Governor and the consent of the Senate, might be directly elected by the people, or otherwise appointed, with equal safety to the public and more in accordance with the popular feeling. If the time shall come, however, when the requisite assent of the Legislature shall fail to be obtained, to authorize a submission to the people of such propositions for amendments, as a clear majority of the freemen of the State shall demand and believe to be necessary for the protection of their rights, discontents will be experienced, and other forms of amendment will be proposed and perhaps successfully urged. Under this conviction, I feel it to be an imperative duty, respectfully but earnestly to request you to give to these, and all other proposed amendments which may come before you, such calm, unprejudiced and thorough consideration, as shall be calculated to satisfy our common constituents with the conclusions to which you shall come.[1]

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[1] The two amendments adopted by the Legislature of 1844, regulating the practice in proceedings for the removal of judicial officers, and abolishing property qualifications for public office, were again adopted at this session, and by chapter 354 were submitted to the people. Both were approved at

The instalments of the State debt, falling due after the present year, have not been brought into notice in the preceding exposition of the condition of the public funds. The last annual report of the Comptroller exhibits the times of payment of the whole debt, and will show that the amounts which become payable in 1846 and 1847, are comparatively small. This may enable the revenues of those years to meet those redemptions, and the unpaid balance of the present year; but the sums falling due in the following years are very large, exceeding five millions, and will require more than any surplus the present revenue can furnish, to preserve the public faith, by making these payments when due. A deferred stock has been suggested as a practicable mode of meeting these debts. To the extent that the current revenues, husbanded with the utmost economy, can furnish the means of payment, this course appears to me equally objectionable, in principle and expediency. A deferred stock, to liberate revenues properly applicable to an existing debt, that they may be applied to other objects of expenditure, is the first and fatal step towards making debt perpetual.

In any view I am able to take of this portion of our financial affairs, I am constrained to believe that the application of the existing revenues to the existing debts, so far as the current expenses of the public service will permit, has become an imperious duty to the whole people, that the burden of the present State tax may be removed at the

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the general election in 1845. No other amendments were adopted by the Legislature, but the whole subject of constitutional revision was committed to the people by an act, chapter 252, passed May 13, under which a vote was to be taken at the general election in 1845, whether a constitutional convention should be held, and if the question was decided in the affirmative, delegates to compose such a convention were to be chosen on the last Tuesday of April, 1846. The people decided in favor of a convention, which was chosen as prescribed by the act, and met at the time and place fixed therein. Its sessions were held during the summer and early autumn of 1846, and the Constitution proposed by it was submitted to the people at the general election in that year and approved.

earliest practicable day, and that the danger of its recurrence may be obviated by a payment of the debts which have rendered it necessary. I also believe that true friendship for our system of internal improvements, and its safe and certain extension, equally require, and will demand, the most speedy payment of the canal debt, and the liberation of the present canal revenues from the wasting demands of interest now resting upon them. I recommend, therefore, that course of financial legislation, which shall make these the prominent objects of its policy.

Our financial condition is by no means desperate. The rapid accumulation of debt was arrested, before it had so far surpassed the power of our revenues, as to render a return within the limits of a sound condition hopeless. The able expositions of 1842, and the sound legislation of that year, satisfied the people of this fact, and the taxation necessary to render this return safe and sure was cheerfully submitted to. The improvement of the revenues of the canals has already laid the foundation of a sinking fund, rendering the speedy reduction of that debt certain, if aided by the whole power of those revenues. Retrenchment of expenditures, it is hoped, may do something towards bringing the payments from the General Fund within its revenues, and the whole State tax for the present year, will at least relieve it from the accumulation of further debt, and afford time for so strengthening its resources, or diminishing its expenses, as to give it power to commence the reduction of its heavy debt. The question submitted to us, therefore, is not that submitted to the Legislature of 1842 — whether we will attempt to bring to order and soundness deranged finances, and restore a fallen credit; but whether, finding our financial condition substantially sound, and our credit high, we will maintain both in that desirable condition, and as soon as it can be done consistently with these objects, relieve our whole people from the tax which the restoration of 1842 imposed upon them.

It is pleasant to turn from our funds thus loaded with debt, to the consideration of others annually dispensing their benefits, without any such incumbrances to objects the most vital to republican institutions.

The productive capital of the Common School Fund was, on the 30th day of September last, $1,992,916.35, and the revenues of the fund received into the treasury during the last fiscal year, amounted to $133,826.51. This revenue is, by the terms of the Constitution, to be inviolably appropriated and applied to the support of common schools throughout the State. The School Fund was instituted by law in 1805, and the constitutional protection of the fund took effect on the first day of January, 1823.*

It is worthy of remark that the revenues of this fund have at no time been anticipated, so as to charge a debt upon them or upon its capital. If distributions to the common schools have been directed beyond the power of the revenues of the fund, as they sometimes have, the same law has always provided the means from which the excess was to be paid, so as to fix no debt upon the fund, or its revenues. The proceeds of the sales of five hundred thousand acres of the public domain of the State, were the first appropriation to this fund, and constituted its foundation.

The immense superstructure which has been reared upon such a basis, and under such management, in a period of forty years, is shown by the following statistics, furnished by the Superintendent of Common Schools.

The number of school districts in the State, organized according to the school law, is 10,990, from 10,857 of which regular reports were received during the last year, showing that the average time during which schools were kept open in these districts was eight months. The whole number of children between the ages of five and sixteen years, residing in the State, estimating those residing in the city of New York at 80,000, was 696,548; and the whole number

* Const. 1821, art. 7, § 10.

of children actually taught in the district schools of the State was 709,156, being more than 50,000 beyond the number taught during the preceding year.

The whole amount of money distributed from the treasury of the State for the use of the common schools for that year, was $275,000, and the amount actually paid during the year, for the wages of common school teachers, was $992,222.03. The number of volumes reported as being in the school district libraries, was 1,038,396. These returns also show, that 37,531 scholars had been, during some portion of the year, in attendance upon private and select schools, out of the city of New York, and it is estimated that at least an equal number were in attendance upon like schools in that city, making more than 65,000 children thus taught, not including those taught in the academies and other incorporated literary institutions.

I do not think it expedient to go more at large into the statistics of our common schools, in this communication, as they will be fully laid before you in the annual report of the Superintendent, and will be found to possess an intrinsic interest certain to command your most anxious attention.

These facts, however, present evidence both striking and satisfactory of the immense extent of public benefit, which revenues, moderate in amount, but incumbered by debt and interest, may work out in so limited a term of years. It is true the School Fund has from time to time been moderately aided in its annual distributions from the treasury, and that now and for several years past, it has received, and is now receiving, one hundred and sixty-five thousand dollars per annum, from the interest of the United States Deposit Fund, a sum greater than its whole annual revenue. This authorizes the enlarged distribution directed by law to be now annually made for the benefit of the common schools.

No public fund of the State is so unpretending, yet so all-pervading; so little seen, yet so universally felt; so mild in its exactions, yet so bountiful in its benefits; so little feared or courted, and yet so powerful, as this fund for the support of common schools. The other funds act upon the secular interests of society, its business, its pleasures, its pride, its passions, its vices, its misfortunes. This acts upon its mind and its morals. Education is to free institutions, what bread is to human life, the staff of their existence. The office of this fund is to open and warm the soil, and sow the seed from which this element of freedom must grow and ripen into maturity, and the health or sickliness of the growth will measure the extent and security of our liberties. The thankfulness we owe to those who have gone before us, for the institution of this fund, for its constitutional protection, and for its safe and prudent administration hitherto, we can best repay by imitating their example, and improving upon their work as the increased means placed in our hands shall give us the ability.

Few if any instances are upon record, in which a fund of this description has been administered, and its bounties dispensed, through a period of forty years, with so few suspicions, accusations or complaints of the interference of either political or religious biases to disturb the equal balance by which its benefits should be extended to our whole population. This should continue as it has been. Our school fund is not instituted to make our children and youth either partisans in politics, or sectarians in religion; but to give them education, intelligence, sound principles, good moral habits, and a free and independent spirit; in short, to make them American freemen and American citizens, and to qualify them to judge and choose for themselves in matters of politics, religion and government. Such an administration of the fund as shall be calculated to render this qualification the most perfect for the mature mind, with the fewest influences tending to bias the judg-

ment or incline the choice, will be the most consonant with our duties, and with the best interests of our constituents. Under such an administration, education will flourish most, and the peace and harmony of society be best preserved.

Our common school system has been so long a prominent subject of legislation, as to have become matured and perfected in many of its most important features. With it, our whole community are familiarly acquainted, and it is quite unnecessary for me to detain you by remarking upon it.

The subject of the proper education and qualifications of the teachers of common schools, is one of primary interest, as it has been found to be of prominent difficulty, in the execution of our school laws. It has so frequently occupied the able pens of my predecessors upon occasions like this, and of our distinguished scholars and statesmen, who have interested themselves in the prosperity of our common schools, and the cause of education generally, as to leave for me little more than to invite your anxious attention to this part of the system, and to the existing provisions of our laws relating to it. Some recent legislation, affecting the management and inspection of schools, the licensing of teachers and their future education, is attracting considerable attention, and exciting some interest in portions of the State. The substitution of a county superintendent of schools, in the place of the former town commissioners, has given rise to discontents in some of the counties, and the proposition to establish a school at the seat of government for the education of teachers, appears to be creating serious apprehensions in the minds of portions of our citizens.

It is feared that an institution for the education of teachers for our common schools, under the superintendence of officers of the State Government, and dependent upon the public patronage and bounty, will lead to influences of a dangerous character; that teachers so sent out, if the law

shall not make them so, may feel themselves to be a preferred and a privileged class, and that the tendencies may be to incline them to use efforts to impress their pupils favorably towards the government to which they feel indebted, and the system which has given them preferment; that a uniform religious and sectarian, as well as political feeling may come to pervade such an institution, and through the teachers there educated, be disseminated in the common schools; and that in the end, a species of government establishment may grow up, giving a cast to the education and political and religious opinions of our youth, dangerous in its influences and results. Apprehensions of this character have been pressed upon me, with evidences of popular feeling upon these subjects entitled to respect, and I feel bound therefore to lay them before you.

In the same connection it is my duty to say that communications from other sources, equally intelligent and respectable, have been received, appreciating most highly these provisions of the existing laws, as great improvements in our common school system, and as promising the most auspicious results, without affording any just ground for the apprehensions to which I have alluded.

My opportunities for personal observation have not been sufficient to enable me to form an opinion as to the practical workings of the change from the town commissioners to the county superintendents, and I do not feel qualified to make any suggestion or recommendation in regard to it. If there be abuses of a serious character, they will doubtless be laid before you, with the evidences of their existence, and you will then be able to determine whether the defect be in the law, or in its administration, and to apply the remedy which the evil shown shall require.

The school for the education of teachers, cannot yet have afforded any evidence of the groundlessness or justice of the apprehensions to which I have referred, and I have not myself studied the subject so as to authorize me to pro-

nounce an opinion, or to interpose any recommendations respecting it. I shall have discharged my duty, therefore, in presenting the point to you, with the suggestions upon both sides, and the expression of my conviction that those who take either are governed by the purest wishes for the steady and secure advancement of our system of education.

The school in question is located at the capital, and is therefore, at all times within the reach of your personal inspection. It would scarcely be deemed reasonable, after its institution at the public expense, to condemn it in advance, and without a trial; but should you become satisfied, from intimate inspection, or other reasonable proofs, that it produces, or is likely to produce, the malign influences which have been anticipated, it will then be your duty to abolish it. And if, on the other hand, this system shall be found to realize the anticipations of its friends, without bringing with it any of the dangers or abuses apprehended by others, it may be confidently expected that the objections alluded to will be abandoned as unsupported by experience.[2]

The Literature Fund is also devoted to the purposes of education. Its capital, at the close of the last fiscal year, amounted to $268,990.57, and the revenues received into the treasury during that year, were $18,490.34. This fund receives $28,000 annually from the interest of the United States Deposit Fund, and its revenues are distributed to the incorporated academies of the State, under the direction of the Regents of the University. As the conditions upon which academies are permitted by the Regents to participate in the dividends from this fund, the incorporation must own real estate and buildings of the value of $2,500, over and above any incumbrances thereon, and must have a fund invested and yielding annual interest for the term

2 Chapter 142, passed May 7, continued for five years appropriations made for the Albany Normal School by the act of 1844. By chapter 184, passed May 10, the common school fund was increased by adding to it the sum of $84,358.15, appropriated by the act of Congress passed September 4, 1841, providing for a distribution of the proceeds of public lands. This amount was received only as a deposit, and subject to recall by Congress.

of twenty years, equal to at least $2,000. The increase of the number of academies participating annually in the distribution from this fund, by bringing themselves within these conditions, furnishes one strong evidence of the rapid advancement of education in the State, and of the very general diffusion of a grade of education beyond that ordinarily required in the common schools. The means necessary to purchase the lot, erect the buildings and establish the funds for these numerous academies are mostly if not entirely drawn from the voluntary contributions of private citizens, and of our incorporated villages and towns; and their collection and application evince, in a gratifying manner, the lively interest taken by our people in the great cause of education. The annual report of the Regents of the University will place before you the condition of these institutions for the past year.

The capital of the United States Deposit Fund is $4,014,-520.71, the proportion received by this State of the surplus moneys in the treasury of the United States, deposited with the States for safe keeping by the act of Congress of 1836. This money was loaned by the State to the several counties, as the safest mode of investment, the faith of the State being pledged for the return of the principal, without interest, whenever the United States shall demand the repayment of the same. The interest has been appropriated almost exclusively to the purposes of education, a single thousand dollars per annum to the New York Eye Infirmary being, as I believe, the only exception.

The opinion is entertained in some quarters, that too large a proportion of this fund has been appropriated to the use of the colleges and academies of the State, and that an invidious distinction is made in their favor as compared with the appropriation to the common schools. This conclusion appears to rest upon the fact, said to be ascertained, that the dividend per scholar, from the public funds, is greater to these institutions than to the common schools. I have not ascertained how this fact may be, nor does it

strike me as a very satisfactory foundation for the conclusion, if it be as stated. These institutions are entitled to the public patronage and bounty so far, and only so far, as they are valuable and useful auxiliaries in the great cause of education generally, and especially in supplying the common schools with competent and qualified teachers, and improved modes of instruction, and in otherwise sustaining and elevating the standard of instruction in those schools. These, as it appears to me, should be the great objects of legislative grants to them, and the measure of such grants. The institutions must be sustained in a healthful and flourishing condition, or the accomplishment of these objects cannot be expected from them. They must be supplied with competent teachers, or they cannot send forth those competent to teach. The value of useful and proper class-books must be known and appreciated in them, or they cannot commend such books for other schools. The standard of education in them must be sound and elevated, or they will not contribute to maintain such a standard in the common schools. Their healthfulness, therefore, or their need, in a pecuniary sense, would seem to me to be a more safe and more just guide to the Legislature than any rule of distribution per scholar. The common schools should never be suffered to languish for the want of the means granted to these institutions; nor should the colleges and academies be permitted to decline and suffer, that the means which would sustain them may be granted to well supplied and healthful common schools. Either extreme would be equally unwise, impolitic and hurtful. All are parts, and essential parts, of one great and valuable and essential plan of education, and sickliness in any branch must soon be felt throughout the whole system. The common schools are the principal, and these institutions are the auxiliaries, essential auxiliaries; and that legislation which shall preserve the most equal and uniform soundness and activity and vigor throughout the whole, will be the most politic, the most wise, and the most just.

Having no information in regard to the condition and wants of these various institutions, I am unable to pronounce an opinion upon the propriety of the present appropriations from the revenues of this fund. I can only, therefore, recommend the rule I have laid down upon this subject for your consideration, being well convinced that, if your examinations shall satisfy you that these appropriations are in conformity with it, you will find no cause to change them; while, if you shall find any essential departure from it, that you will make the changes which the healthful action of our whole system of education shall seem to require.

By a law passed on the 10th day of April, 1838, principal moneys of the United States Deposit Fund paid, were directed to be transmitted to the State Treasury and not reloaned, that they might be applied in extinguishment of the debt standing against that fund, due to the canal fund. Payments of principal money have been made to an amount sufficient to extinguish that debt, and it is submitted for your consideration whether this law ought not to be repealed, and the authority of the commissioners of loans to re-loan the principal moneys of the fund, originally conferred by the twenty-eighth section of the Act of the 4th of April, 1837, be thus restored. It is important that these principal moneys be made constantly productive, that the appropriations of the revenue from them to the objects before named may be regularly met, and no other mode of investment appears to me to offer the same security with an equal rate of interest. As a mere financial question, therefore, separate from the consideration of accommodation to the inhabitants of the respective counties, it appears to me that the authority to re-loan these moneys should be restored.[3]

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[3] Chapter 267, passed May 13, directed that moneys received on loan mortgages either as principal or interest be re-loaned and the fund kept invested.

Our penitentiary system has been a subject of primary solicitude and deep legislative care, for a long series of years. In its early stages, next to the prevention and punishment of crime, the heavy burden upon the public treasury, and the removal of that burden by making the labor of the convicts pay the expenses of their punishment, was the object most anxiously sought. It was finally reached through radical changes in the construction of our prisons, and the improvement in prison discipline which those changes rendered practicable. I entertain the impression that our State was the first to bring about the accomplishment of these great improvements in the construction and police of prisons, and with them the equally important result of making them support themselves. Various accidents, since that desirable point was first reached, such as the construction of new buildings, additions to, and improvements of, the old, and a necessity for changing the labor of the convicts from employment to which they had become accustomed, to that which they were to learn, have created calls upon the treasury for aid to support the State prisons; but, as an ordinary rule, when the labor of the convicts has been directed to support alone, it is believed that it has fully met that charge, and, for some years, it has yielded a very considerable surplus.

The reports made to me by the inspectors of the prisons at Auburn and Mount Pleasant, present both these institutions at present in a sound and prosperous state, the health of the prisoners ordinarily good, the discipline carefully preserved, and the avails of the labor of the convicts for the current year, promising to meet the expenses of the prison.

The number of male prisoners in the Mount Pleasant prison has increased one hundred, comparing the year 1844 with 1843, but more than half of that increase is accounted for by the transfer of thirty prisoners from Auburn, and the addition of eight counties to that prison district. The

whole number there confined on the 30th of September last was eight hundred and sixty-three. The number of female convicts at Mount Pleasant, at the same period, was seventy-two, four less than the number at the close of the preceding year. The whole expenses of the prison, for the last fiscal year, amounted to $64,215.03, which the inspectors say is less, by from two to fourteen thousand dollars per year, than the expenses of the three preceding years, and they anticipate that the avails of the labor of the convicts, for the current year, will be equal to the support of the prison. This report makes several important suggestions for diminishing the expense and improving the condition of this prison, and especially as to a sufficient supply of pure water; but as the annual report of the inspectors to the Legislature will doubtless present these subjects, together with all the statistics in reference to the prison, more fully than I could do in this communication, I respectfully refer you to that document, when it shall be laid before you, and invite your attention to its statements and recommendations.

The number of prisoners confined at Auburn on the 30th of November last, was seven hundred and fifty-five, being but twelve more than at the close of the previous year; but it should be borne in mind that the transfer to the Mount Pleasant prison, of thirty of the Auburn convicts, probably diminished the number remaining in the latter prison to about the same extent, while the change of the prison districts would have diminished the number of commitments for the latter portion of the year. The whole expenses of this prison for the last fiscal year, were $68,-107.40, but this included some five thousand dollars of debts standing over from previous years, which were paid during the last year, from a special appropriation made from the treasury for that purpose. The earnings of the prisoners employed upon contracts, during the last year, amounted to $52,389.10, and the same earnings, for the

current year, are estimated at $60,000, while the expenses of the prison for the year, for general support and repairs, are estimated at the same sum. The report from this prison contains many interesting facts, relating to the discipline and moral and intellectual condition of the convicts, but which, as they will probably be repeated in the annual report of the inspectors to the Legislature, and as they call for no action on your part, I omit to notice.

For several years previous to the last, extensive complaints were made, on the part of the mechanics of the State, against the manner of employing the convict labor in the State prisons, as particularly unjust and oppressive upon them as a class of our citizens. The ordinary branches of mechanical and manufacturing labor chosen for the occupations of the prisoners, and the manner of employing them in the branches selected, by hiring their labor to mechanics and manufacturers in those trades, it was urged, raised up an unequal and unfair competition, in favor of those employers, against their fellow-citizens of the same trades, but without that facility to procure cheap labor; that the State could afford to hire out these convicts at a rate of wages merely equal to their own support, in the economical way in which that support is provided in the prisons, because the services of the laborer were to cost it nothing more; that such labor could be made to supply the market with a better article, at a less price and greater profit, than the mechanic or manufacturer can do, who has not the benefit of this artificial standard to govern the wages of his laborers.

A further ground of complaint was, that this mode of employing the convicts, thus constituting them mechanics confined to a few trades, and those to a great extent the most common, and necessarily followed in all parts of the State, was throwing the whole body of these State criminals, after their discharge from prison, upon that particular class of society, and making them the associates of the apprentices and journeymen in those trades.

The last Legislature considered these complaints worthy of an effort to change the policy, and authorized the erection of a new State Prison, in the iron region of the State, with a view to the employment of the convicts in mining, making iron, and such branches of the manufacture of iron as are not commonly practised by the mechanics of the State. A site has been selected for the proposed prison, by the persons, and in the manner, pointed out in the law, located in the county of Clinton. Two hundred acres of land have been purchased, including what is believed to be a very extensive bed of iron ore, of excellent quality; and the location, with reference to coal, water, and other requisites for the proposed business, is considered very favorable. The annual report of the agent of the proposed prison, will place you in possession of all the facts important for your action in furtherance of this experiment to change the labor of the convicts in our prisons. Your predecessors adopted and established the policy of the measure, and $17,500 have been paid for this site for a prison, as one important step towards the execution of their law. A plan for the new prison will accompany the report of the agent, and further appropriations will doubtless be wanted to enable him to proceed with the erection of it, and the necessary buildings for the proposed manufacture of iron. Of the amount of appropriations which will be necessary, I am not advised, but you will be informed by that officer, and presented by him with the facts and views upon which his estimate is based.

The course having been deliberately resolved upon, it should be prosecuted with energy and good faith, and the work should be hastened as rapidly as the means at your command applicable to it, and true economy of expenditure, will permit. Still, those who feel an interest in the accomplishment of the change, should constantly bear in mind that time is required; that the work to be performed, and the expense to be incurred, must be very great, be-

fore the revolution proposed can be perfected, even if the experiment should be attended with complete success. The enterprise is one of deep interest, but one which impatient haste may endanger, and cannot serve.[4]

The public charities of the State form another class of objects for your paternal care. Among them no one stands more prominent than the provision made for the insane, and especially for the insane poor. The State Lunatic Asylum, lately established at Utica, is particularly designed for the relief of this most unfortunate class of our fellow beings, and the munificence of preceding legislatures towards it, and the promptness with which the counties and towns of the State availed themselves of its benefits, afford the highest evidence of the strength of that charity in the affections of our people. There is not, perhaps, an instance upon record where a public institution of that description and extent has been so promptly filled with patients, and certainly few where the happy result of entire restoration to reason, considering the condition of the patients when received, and the duration of the malady before that time, have borne a greater proportion to the whole number of cases treated. There were in the asylum, at the commencement of the last year, one hundred and ninety-six patients, and received into it during the year, two hundred and seventy-five, making the whole number of cases within the year, four hundred and seventy-one. Of this number one hundred and thirty-two were discharged cured, forty-seven improved, sixteen not improved, and sixteen died, leaving two hundred and sixty patients in the institution at the close of the year. Of this number one hundred and thirty-one were males, and one hundred and twenty-nine females, and patients were in-

[4] Chapter 70, passed April 16, amended in several particulars the Clinton Prison act of 1844, and appropriated $75,000 for purposes of the original and amended acts. Chapter 335, passed May 14, made provision for procuring an additional water supply for the Mount Pleasant prison.

cluded from forty-nine of the fifty-nine organized counties of the State.

The patients remaining, at the close of the year, filled the asylum, and indeed crowded it; but all poor patients chargeable to the towns and counties had been received, and there were a number in addition supported by their friends, or from their own means. The price of board during the year was reduced from $2.50 to $2 per week, and yet the income of the institution was expected to equal the expenses, so as to call for no new appropriation for general support. Under the appropriation already made for enlarging the asylum, additional accommodations for two hundred patients are commenced. This appropriation was $60,000, of which but $6,000 have been drawn from the treasury, so that, although no further appropriation may be required, means to enable the treasury to meet the existing one, are to be provided. As the managers of this institution are required to make an annual report to the Legislature, I forbear to go further into its particular condition, except to say that the presentation furnished to me is a most encouraging and gratifying one, both with reference to the liberality of the State towards the insane, and the faithful and successful application of its means by the managers and officers of the asylum.

There were in the Lunatic Asylum at Bloomingdale, at the commencement of the last year, one hundred patients; received up to the 6th day of December, one hundred and two, and discharged ninety-nine, leaving in the institution, on the last named day, one hundred and three.

As the fiscal and calendar year are the same at this institution, it has not been in the power of its officers to lay before me the condition of its pecuniary affairs for the last year, but a communication from the resident physician informs me that it will not vary materially from that of the year 1843, as reported to the Legislature during its last session. A reference to that report will show

that the financial affairs of the asylum appeared then to be in a fairly healthful state. The resident physician gives a favorable and encouraging account of the condition and treatment of the patients in the institution, and thinks it will bear a comparison with any similar institution in the world, and he seems to speak from a very extensive experience and examination.

The annual report to the Legislature, of the governors of the New York Hospital, of which this asylum is a branch, will put you in possession of all the necessary information in relation to both institutions. The State pays an annual annuity to the hospital of $12,500, and to the asylum of $10,000.

The principal of the institution for the education of the deaf and dumb in the city of New York, has laid before me an interesting statement of the condition of that school, but as the fiscal closes with the calendar year, the state of its finances for the last year could not be given.

The number of deaf mutes resident in the institution on the second of December last, was one hundred and eighty-five, of whom three were connected with the department of instruction, seven with the mechanical department, seven were employed in domestic household duties, and one hundred and sixty-five were pupils of the school.

The sums received, and to be received, from the State, from the various appropriations to this institution, were estimated to amount for the year, to something more than twenty-two thousand dollars, and it was stated that some of the laws making these appropriations are about to expire. An intimation was also given that additional aid was desirable and might be asked. Many other interesting facts were stated in relation to the institution, and the advancement of education, and improvement in the modes of instruction, but as all will be more fully placed before you in an annual report from the managers, to be laid before you early in your session, I omit a reference to them here.

Next to the deprivation of reason the subjects of this charity make the strongest appeal to the public sympathies, and will doubtless command your guardian care. In the present embarrassed condition of the General Fund and the deficient state of its revenues, I cannot feel authorized to recommend an increase of the already very liberal patronage extended to this institution. It will doubtless be your pleasure to continue that already extended, so far as the revenues relied upon to meet the present appropriations, and the state of the public treasury will warrant.[5]

The New York Institution for the Blind is another public charity only second to the two which have been mentioned. A statement from the corresponding secretary of the incorporation gives the present number of pupils at one hundred and ten, of whom eighty-eight are supported by the State at the annual expense of one hundred and thirty dollars each. This will amount to $11,440 per annum, paid from the public treasury for the education of pupils in this school for the blind. The account given of the advancement of these unfortunate children in the various branches of education, in the science of music, and in mechanical and manufacturing industry is one of deep interest, and it is a matter of profound regret that, with this liberal patronage from the state, the funds of the institution are not such as to preserve it from embarrassments which limit its usefulness. The managers suppose they can derive a benefit from certain alterations and extensions of their charter, which will aid in relieving these embarrassments, among which is the permission to constitute this institution an asylum, as well as a school, for the blind. My acquaintance with the subject does not enable me to judge of the propriety of this extension of the charter; but I invite your

[5] By chapter 14, passed February 28, the act of 1840, extending for five years the relief to the New York Institution for the Instruction of the Deaf and Dumb was again extended for five years from April 1, 1846, and the institution was authorized to receive four additional pupils from each senate district.

careful attention to the request, convinced that it will receive your favorable action, unless there shall be sound objections against it.[6]

It is a most gratifying reflection, that during all the period of our late financial embarrassments, driving us to the necessity of direct taxation, our expenditures for education, for the maintenance of our penitentiaries, and for the liberal support of our public charities, have not merely not been diminished, but have been increased and extended, at least to keep pace with our increasing population. This single fact speaks volumes in favor of the intelligence, patriotism, and public spirit of our people.

Few subjects connected with this communication, have been pressed upon me with so much earnestness since the close of the late election, as the necessity of some additional legal provisions to secure the independent and unbiased exercise of the elective franchise, and the purity of the ballot box, especially from the corrupting influence of money. No subject can possess deeper interest to the freemen of our state and country, or be more vitally important to the very existence of our political institutions. Without however detaining you with remarks to establish a position which will be instantly conceded and fully appreciated, I will proceed directly to the points to which I propose to confine my suggestions.

One of the prominent complaints is that efforts are made, and successfully made, to defeat the policy of our present law, intending to secure to the elector the privilege of keeping his vote from the sight or inspection of the officers of the election, or any one else, and its character known to himself only. By the law, if he chooses to hand his ballot to the inspector closely folded, the law prohibits the inspector, upon pain of severe punishment for a misdemeanor, from so opening it as to expose the names of the

[6] Chapter 58, passed April 12, appropriated to the New York Institution for the Blind $5,000 annually for five years.

persons voted for upon it. The law, however, requires that the ballot should be labelled upon the outside, and if folded, it must be so folded as to leave this label visible. This is made one of the means of defeating the protection intended to be thrown around the elector, by enabling him to keep the character of his vote a profound secret from all the world but himself, if he should choose to do so. This label, as a general remark, must be printed, and the character of the type is made to designate the political complexion of the vote within, as plainly, to those who understand the design, as would the inspection of the names upon the ballot. In this way the influence of the employer over the feelings and fears of the employed, is as fully and forcibly exerted, as if the latter were required to give a *viva voce* vote, or deposit an open ballot. So the description and color of the paper upon which ballots are printed is often resorted to for the same purpose, and in this way the spirit and intention of the law, to protect the elector in the independent exercise of his own free choice, are circumvented and defeated.

I do not know that it is possible, by legislation, to reach and prevent all these devices unduly and improperly to influence the free choice of the elector, but it does appear to me that all the abuses growing out of the use of a label upon the ballot, may, as our law now is, be prevented by a very slight modification. When there is not a presidential election, and when no amendments to the Constitution are to be voted upon, we now have but one ballot box and one ballot, and then manifestly no label can be required. I can see no cause to apprehend inconvenience or injury, by such an amendment of the law as shall render but one box and one ballot necessary at any time. The persons voted for as electors of president and vice-president, may be as well designated upon the state ticket as upon a separate one, and the opinion of the elector upon any constitutional amendment, can be as well expressed upon that as upon a

separate ballot. Nor do I think the addition to the size of the ballot, in either of these cases, would produce any serious objection.

I respectfully submit these suggestions for your consideration, confident that, as far as you shall find it practicable, you will defend the elector in the enjoyment of that impunity from improper influences in giving his vote, which it has ever been the policy of our law to secure to him.

Another point of much more serious complaint, is the extensive and rapidly increasing practice of betting upon elections, and the interested, selfish, and corrupting tendencies which it exerts upon the election itself. It is true, that bets so made cannot now be recovered by action, or payment enforced in any legal manner, and that property or money, staked, or even paid over upon a bet, may be recovered back in a suit at law; and yet it is equally true, that a public opinion exists, almost universally, so strongly condemnatory of the conduct of him, who, having made a bet, refuses the payment; or, having paid, seeks to recover back the money, as to have almost the force of positive law, to compel the payment. Indeed, instances have existed, when bankruptcy has been the consequence to the losing party, and yet pecuniary ruin has been preferred to a resort to the protection of this statute. Under such a state of things the law is wholly ineffective to prevent the practice, as its alarming increase too clearly proves.

Still the evil influences of the practice upon our elections, and the propriety of interposing by legislation to avert them, are fully recognized in the present law. These improper and corrupting influences have made themselves manifest to the whole body of our freemen, and constitute a theme of almost universal complaint. Upon the party to the wager, they are all controlling. His ear and his mind, from the moment his money is staked, are closed against argument, or reason, or examination, either as to the ques-

tions involved, or the candidates presented for his suffrage. He must so vote and so act as to win his bet, and the welfare of the country becomes an entirely secondary consideration. His appeals to all over whom he may hope to exert an influence, are to save himself from loss, and help him to win the money of his opponent, not to examine and inquire how they may best serve their country by their votes.

The manner in which this evil practice extends itself, presents another and even stronger reason for its more effectual suppression. It operates as a positive coercion upon many who are really unwilling to make bets, because it is made a test, by the members of the contending parties, of the confidence of each other in the strength of their cause and their candidates, and their final party success. The offer of the bet is often the consequence of heated discussion and strong partisan feeling, made by one who, without excitement, would neither offer nor accept a bet upon an election, and yet once made and reluctantly accepted, the same coercion prevents either party from receding; the wager remains, and they become parties to a bet upon the pending election, and subject to all the selfish and corrupting influences which have been described, though both feeling a repugnance to the practice. To avert these evil influences from such parties, and save them from the coercion of so artificial and imaginary a test of political sincerity and confidence, if it can be done without a violation of principle, is certainly most desirable, and would be a valuable improvement in our legislation.

Many have suggested disfranchisement as the penalty of becoming a party to a bet, upon the very rational ground that he should not be permitted to vote at all, whose vote is to be governed by his private interests, and not with reference to the public good. This suggestion, however plausibly urged, we have not the constitutional power to adopt. The Constitution of our State declares the qualifi-

cations and disqualifications of the voter; and does not give to the Legislature the right to subtract from the one or add to the other.[e] Its whole power in the matter is to pass laws for ascertaining the constitutional qualifications. The suggestion which strikes me with most force, and as most likely to arrest the practice of betting, is to make it punishable criminally; to subject the parties to every bet made upon the result of an election, to indictment, and upon conviction, to punishment by a fine, to be graduated by the amount of the wager, and to all the costs of the prosecution. If a fine be given entirely to the complainant, the probability of prosecution, and consequently of arresting the evil, will be strengthened.

No valid objection in principle against such a law has occurred to me. The deleterious influence of this species of gambling upon the public morals alone, would, it appears to me, justify the passage of a law which should make it criminal. And when its corrupt and corrupting tendencies upon our elections, upon the free and proper exercise of the elective franchise; when its influence to bring the improper expenditure of money into a political canvass, and to apply it under the desperate impulse of a gambling spirit, are considered, I cannot doubt that the moral and political aspect of the evil will fully justify its classification as a crime, and its punishment as such.

I submit the suggestion, however, with great deference, and in the full conviction that it will not receive your sanction, unless you deem it sound in principle, and likely to prove salutary in practice. Such a law cannot do less than relieve from coercion those who do not make bets from voluntary choice; as no state of public opinion will be likely to require of the citizen, that he should violate the law, and subject himself to indictment, to manifest his confidence in the correctness of his political opinions, or the success of his political party; and if any should be reck-

[e] Const. 1821, art. 2, § 1.

less enough to challenge him to do it, his refusal, placed upon this ground, will admit of none of the inferences which constitute the coercion at present felt.

The use of money at our elections, not connected with wagers, has become a subject of universal complaint. The provisions of our law are very rigid, and expressly confine the lawful use of money upon those occasions to "defraying the expenses of printing and the circulation of votes, handbills and other papers, previous to any such election, or for conveying sick, poor, or infirm electors to the polls;" and any candidate for any elective office, or any other person, who shall, with intent to promote the election of any particular candidate or ticket, contribute money for any other purpose, is guilty of a misdemeanor, punishable by fine not exceeding two hundred and fifty dollars, or by imprisonment not exceeding six months. It is difficult to see how provisions of law can be more rigid, and not restrict the free publication and circulation of political matter, or prohibit offices of kindness to the sick, poor or infirm; and yet it is manifest that the evils and mischiefs intended to be prevented by the present law, yet exist, and are rapidly and alarmingly augmenting. It is impossible to presume that the contributors expect, or intend, to keep within their own control, or even to retain a personal knowledge of, the uses to which their money is applied, as vast purses are frequently made up for the avowed purpose of wide distribution throughout the counties of the State, and not to meet the lawful expenses of the election in the county where the contributors reside, and are voters. The forms of the law may be observed in the subscription papers, but the spirit of the law is disregarded, if not expressly departed from, when the application and use of the money is placed beyond the power and knowledge of him who gives it.

It is worthy of consideration whether contributions in money, for any purpose of expenditure, even within the

terms of the present law may not be safely confined to the county. If the object is publication, let the contributions be in publications and not in money, and the expenditure is brought within the terms and provisions of the law, by the act of him who contributes the money. It will scarcely be contended that the sick, or poor, or infirm, of any one of our counties, will be kept from the poll, if money is not contributed from another county to defray the expense of conveying them to it. Every county has citizens enough, able and willing to perform that service for their sick and poor and infirm neighbors.

It has been suggested that this corrupting influence upon our elections may be restrained, by limiting the amount, beyond which no candidate and no citizen shall contribute for any purpose. If such a limitation can be imposed and enforced, it will doubtless go far to restrain the evil, as it is apparent that very large amounts are paid by comparatively few subscribers. Large contributions cannot be made with any regard to the provisions of the existing law, and the contributor doubtless contents himself by the reflection that he but gives the money, while, taking no part in its expenditure, he is not responsible for any violations of the law to which his act may lead. Such contributions of money, for such a purpose, cannot fail to lead to abuses, and are therefore themselves abuses, and any provision which should effectually restrain them, without a violation of principle, would be a most important step towards exempting our elections from the poisonous influence of money.[7]

Two proposed amendments of the Constitution will call for your action, further to extend our judiciary system. One provides for the addition of three associate chancel-

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7 The election law of 1847, chap. 240, passed May 8, amending the act of 1842, chapter 130, added a provision requiring a person challenged to take an oath that he had not made any bet or wager and was not interested directly or indirectly in any bet or wager depending on the result of the election.

lors to the court of chancery. This court has always hitherto consisted of a single judge, but years of experience have proved that the labors of no one man are equal to the discharge of the duties and the dispatch of the business of that court.

The other amendment adds two justices to the bench of the supreme court. Formerly this court was composed of five judges, and they performed all the duties of the bench and of the circuits for the whole State. At the revision of the Constitution, eight circuit judges were provided for, and the judges in bench were reduced to three.[f] As with the court of chancery, the experience of several years last past has conclusively shown that the three justices cannot do the business falling upon this court; and in both the supreme court and court of chancery, delays of justice are suffered, deeply injurious to parties, and laying the foundation for just complaints.

A conviction of the necessity of adding to our judiciary in some safe and proper way, has long since been produced upon the minds of our people, and differences of opinion as to the expedient mode of accomplishing the object, have prevented amendments of the Constitution until this period. With a full view of all the facts, and a full knowledge of the necessity of some further provision upon this subject, your immediate predecessors matured the amendments now under consideration, and made the preliminary submission of them to our common constituents. Most of you have been elected at the election when these amendments were before the people, and of course with reference to their further disposition, and I submit them to your action, conscious that nothing which I could add to the communications of my predecessors upon this interesting subject, almost annually made for the last eight or ten years, would increase your sense of the necessity of some provision to

[f] Const. 1821, art. 5, §§ 4, 5.

reach and cure the evil complained of; and I do not feel competent to enlighten you by any attempt to discuss the merits of these particular amendments as compared with other propositions which have been, upon various occasions, submitted to the Legislature and the public. All the ground of discussion presented has been so frequently and so ably occupied, as to place within your reach all the views of which the topic is susceptible.

If it shall appear to you that these amendments will accomplish the object desired, and in as safe and practicable a mode as any other, I am sure they will not fail to command your assent in a way which will place them before the people for their final action.

A further proposed amendment to the Constitution, securing to persons subject to removal from office by the joint resolution of the two houses of the Legislature, or by the Senate on the recommendation of the Governor, the right to information as to the grounds upon which it is proposed to remove them, and to be heard in their defence, will also demand your attention. The principle involved in this proposition, as one of general application is certainly sound, and in strict conformity with the policy and spirit of our law; and no reason occurs to me against its application to this class of cases, while without some special and strong ground for the exception, there would seem to be abundant reasons why it should be so applied.

Still another amendment is proposed and will also come before you. Its object is to abolish the property qualification required in the Constitution to hold a seat in the Senate, or the office of Governor. I am not aware that the provision applies to any other offices. The qualification is doubtless in conflict with the present policy of our laws, and feeling of our people, as the day has passed by when the title to a freehold is supposed to be a necessary qualification either to entitle a citizen to vote, or to be voted for. I

cannot doubt that the amendment will meet with your approbation.[8]

The transactions of the State Agricultural Society, annually communicated to you, will afford information in relation to that great interest, so much more full and authentic than any it is in my power to lay before you, that I consider my duty best discharged by commending to your notice that forthcoming communication, without any attempt to anticipate its contents. The commanding position which that society has taken within the last few years, has roused the energies of our agriculturists beyond any former example; and those energies have been wisely directed to practical and substantial and valuable improvements, in an unusual degree. Societies have been organized in about fifty counties, and each year presents the proceedings of annual fairs in some of them, of which any agricultural population may well be proud. The fairs of the State society already rival the best in the Union, and, in very many respects, bear a favorable comparison with any in the world.

The appropriation of eight thousand dollars per annum, for a short term of years, by the Legislature of 1841, for the encouragement of agriculture, seems to have added impetus to these movements; and the more rigid system of accountability for the expenditure of the money, and its more wise application to real and practical improvements in agriculture, appear to have given to the appropriation more extended utility than has always been visible from like expenditures.

This law is to expire during the present year, and certainly no body of men can be better qualified to determine whether it should be extended, than the representatives of the counties where these societies exist, where the members

[8] The judiciary amendments were not adopted again at this session. See note 1 as to amendments relative to the removal and to the qualifications of officers.

of the State society are found, and the influence of their instruction and example is felt, and where the benefits of these organizations are experienced, if benefits proceed from them.

The interest involved is not merely the most important committed to our charge, but more important than all others, and the only question we have to solve is, whether it will receive that encouragement from a continuance of the appropriation, which ought to be derived from the expenditure of that amount of the money of the people, and not whether the interest is worthy of that amount of encouragement. The decision of the question is referred to you, with the assurance that I shall cheerfully concur in any reasonable measure, designed and calculated to afford substantial encouragement to the agriculture of the State.[9]

I regret that my duty to communicate to you the condition of the State cannot be discharged without bringing to your attention a subject of a very different character, but one of deep and pervading interest. I refer to the difficulties existing between the proprietors of certain leasehold estates, in several of our counties, and the tenants upon those estates. For several years past these difficulties have been accumulating, and have, from time to time, been the cause of local disquiet more or less extensive, and more or less seriously threatening the preservation of social order and the public peace. Still, with one or two exceptions, the authorities of the counties have been relied upon to maintain the law, preserve the peace, and protect the rights, property and persons of the citizens, against any attempt of the ill-advised to violate either. Resistance was made during the period referred to, and sometimes too successfully made, against the officers of justice in the discharge of their official duties, but under circumstances leaving the hope that misapprehension, acting upon minds

[9] By chapter 60, passed April 12, the act of 1841, chapter 169, to promote agriculture was extended for two years from the 5th of May, 1846.

suddenly excited, had occasioned the resistance, and that time, calm reflection upon the magnitude of the offence committed, and more patient and dispassionate inquiry into the grounds of complaint, and the wise and proper mode of redressing the grievances, if any, which should prove to have real existence, would cure the disturbances, and relieve our ordinarily peaceful and prosperous communities from the dangers which threatened them.

This reasonable hope has not been realized. An exciting State election was made the occasion for an earnest attempt to intermix these questions with the general politics of the State, and make them tests of election to the Legislature. It was but reasonable to expect, after the appeals made in this form had been patiently listened to, maturely considered, and deliberately decided by the freemen of the counties before whom the questions were raised, that further efforts, in any other manner, to accomplish the objects sought, would be at least delayed until the relief expected could have been asked at the hands of the Legislature. Even this delay has not been suffered, but resistance to the law and its officers has been renewed, in forms and under circumstances of the deepest aggravation. Organized bands of men, assuming the disguise of savages, with arms in their hands, have already bid defiance to the law, its process and its officers, and in repeated instances, and in more than one county, put the life of the sheriff or his deputies in imminent peril, forcibly taken from them their official papers, and burned them in open day, compelling the officer to desist from further attempts to discharge his duties.

These misguided violators of the law and disturbers of the public peace, have not confined their outrages within even this limit. Already the lives of two peaceable and unoffending citizens have been taken, and in both instances, when neither the sheriff nor his officers were present, and when no attempt was made to serve legal process.

Minor outrages upon the rights and persons of private individuals, and the peace of neighborhoods, had begun to

awaken attention to the danger of these lawless and passionate proceedings; but these wanton sacrifices of human life, in a manner so unprovoked and causeless, have given to the whole public mind a shock, which nothing but the prompt and effectual restoration of the reign of law and order can calm.

While the question between the proprietors and the tenants was whether the leasehold tenures should be perpetuated, or the rents should be commuted upon fair and reasonable terms, and fee simple titles should be given upon the payment of a capital in money, which invested at a stipulated rate would reproduce the rents to the landlord, the controversy was one in which the feelings and sympathies of our people were deeply enlisted, and strongly inclining in favor of the tenants.

Then the question was, not whether rights of property are to be trampled upon, the obligations of contracts violently resisted, the laws of the State set at defiance, the peace of society disturbed, and human life sacrificed, but in what way contracts, onerous in their exactions, and tenures in their nature and character uncongenial with the habits and opinions of our people, could be peaceably and justly and constitutionally modified to meet the changed circumstances of the times, and then I might have invited your careful attention to the considerations growing out of these issues.

But I feel precluded from discussions of this character, by the extravagant and indefensible position given to the controversy by the unlawful and violent proceedings of those who assume to take the charge of the rights and interests of the tenants involved in this litigation. I say those who assume to take the charge of the rights and interests of the tenants in the matter, because I cannot believe that the great body of farmers, who are the occupants of these leasehold estates, are either parties, or conscious and willing accessories to these violations of the laws of the State, and to high crimes, subjecting the perpetrators

to punishment in our State prisons. I do not believe that they, as a body of men, are prepared to trample upon the rights of any class of their fellow-citizens; to break up the peace and order of society; to paralyze the arm of the law, and make might the measure of right; to disguise their persons that they may avoid the responsibilities of their own acts; and least of all, wantonly to sacrifice human life in such a controversy. Still, that there are those who have deliberately made up their minds to all these revolting consequences, or who are passionately and thoughtlessly pursuing a course of conduct calculated to bring them upon us, the facts which have been adverted to conclusively prove. The information communicated to me, however, authorizes the belief that this desperate extremity, whether of deliberate determination, or of thoughtless passion, has been reached by comparatively few, and that many of those are not themselves tenants, but persons who have for hire enlisted themselves into the service of the anti-rent associations. I cannot be responsible for the truth of this information, as I have no personal knowledge whatever in the matter; but it has reached me from sources which I consider entitled to my belief.

If such be the fact, and there are those engaged in these transactions, who have no other and deeper personal interest, any appeal to them I fear would be in vain. If any individual who enjoys the blessings, and seeks for himself and his, the protection of our free institutions, is prepared, upon calm reflection, to serve for hire in such a cause; is ready to make himself the instrument of visiting these wrongs upon his fellow-citizens, and these evils upon society, for the paltry consideration of the wages of the day laborer; to him I should address myself without hope.

To the tenants themselves, who are the real parties to this controversy, and whose deepest interests are at stake, I can appeal with some confidence. Have they been able to convince themselves, or can they convince themselves, that

violent wrong to others is the rule by which right is to be secured to them? That open and criminal resistance to the laws and authorities of the State, is the way in which they are to find peace and security for themselves and their families? That a course tending to disgrace, if not to subvert, our republican institutions, can lead to wealth or prosperity or happiness, for them and theirs? Have they reflected that the very theory upon which our government is instituted, is equal protection to all, and that the strong arm of our Constitution and laws, is the security of the feeble and dependent against the wealthy and powerful? It is for man, not money; for the tenant, not the landlord; for the laborer, not the employer; that the protection of the law, and its faithful execution, are most required; and when the former shall take weapons in their hands to break down and destroy that protection and security, they but invite the invasion of the latter upon their rights and privileges and liberties, by a removal of the only obstacle against a successful assault.

Under this view of their rights and interests, to say nothing of their duties to society and their country, can they believe it wise to persist in the course they have taken? To countenance and sustain those who openly set the laws at defiance, and who pursue a course calculated to subvert the government of our country itself; and this without proposing to take any step towards the final adjustment of the disputed rights and questions involved in the controversy, other than that which is taken by the criminal exertion of physical force? Are not the associated tenants conscious that many of those who apparently act with them, are influenced by the coercion of fear? And do they not know that threats have been used to force individuals into the associations and to deter them from seceding? Is it not true also that one of the avowed objects of the combination is to prevent individual tenants from making voluntary payment of rent, or from purchasing a title from their

landlords, upon any terms however fair and liberal, and for any consideration however reasonable and just, unless the association shall first yield its assent to the compromise? Here, then, is resistance not only against the leases as they are, but also resistance against such a change of the leases as shall remove their ground of complaint.

Is it not moreover true that a system of rent assessed upon the lands is rigidly enforced, to meet the expenses of this organization, more obnoxious to the principle and spirit of freedom than the leases themselves? And are there not involuntary contributors, from whom payment is coerced by means much less defensible than those which the landlords attempt to use to collect the rents?

Again, I ask, can it be that the tenants, industrious and worthy farmers as they are, can either hope, or wish, to sustain a position so unnatural, by means so wholly indefensible? Will they not reflect upon the dangers they may incur as accessories to the crimes committed by their disguised agents, if they continue to pay their money to support and sustain those agents in their illegal proceedings. After what has already transpired, can they say to their own consciences, much less to a jury of their country, that they make these contributions in ignorance of the uses to which their money is to be applied, or that, with such knowledge, they do not make themselves, morally at least, if not legally, accessories to all the offences to which these contributions may lead?

If, however, there shall be those among the tenants whose passions or prejudices are too strong to be overcome by these and like considerations, may I not finally appeal to those who have become reluctant members of these mistaken associations, and who have been made to contribute of their means, or by their names, to sustain such illegal and criminal proceedings, now to step boldly out and resume their duties to society and their country? To take the side of the Constitution and the law, against the violators

of both, and to show that their intentions were not criminal, and their objects not subversive of our free and glorious institutions, by manfully lending their aid to prevent, or detect and punish crime, and to preserve the order and peace of the community?

In any event, if these appeals to our fellow citizens shall not be listened to, upon us rests the responsibility of furnishing the necessary aid to the ministers of the law, to enable them to perform their duties and to arrest and bring to trial and punishment those who shall unlawfully resist them. The power of the county is confided to the sheriff, and upon him rests the duty of calling it into exercise, as far as need may be, to enable him to enforce the laws, and to protect the property and rights and lives of the persons within his bailiwick. This power is given without qualification, other than the measure of the necessity which calls it into exercise. It extends to every male inhabitant of the county of sufficient age to render effective assistance, and to be able to comprehend the duties and responsibilities of the citizen; and it is upon the peril of indictment and punishment that any such inhabitant disregards or disobeys this summons of the sheriff. Mr. Jefferson, one of the ablest, as he was one of the most sincere and ardent defenders of the liberties and rights of the people, whom any country has produced, considered this feature of our system as comprehending its principal strength. He said, "I believe this the strongest government on earth. I believe it the only one, where every man, at the call of the laws, would fly to the standard of the law, and would meet invasion of the public order as his own personal concern." This is the proper personal concern of every American citizen, and if the time shall ever come, when the mass of our people shall refuse so to consider and so to treat invasions of the public order, or shall join those who resist the law and its officers, then will our liberal institutions have been voluntarily sur-

rendered by those they were designed to protect and bless; then will the blood of our revolutionary fathers have been shed in vain, and their descendants will prove themselves unworthy of the rich inheritance transmitted to them through so much toil and peril and suffering; and then will the cause of free government receive a fatal blow, and monarchists everywhere will rejoice at the incapacity or indisposition of man to govern himself.

The present indications of the public mind and feeling, in relation to the outrages which have been referred to, sufficiently prove to us that this fatal period is not yet even approaching, with our citizens, and that all those entrusted by them with the execution of the laws will most lamentably misrepresent them, if they pause in their exertions to restore peace and security and order. It is highly creditable to the fidelity and patriotism of our citizens, that, hitherto in these recent disturbances, formidable as has been the shape they have assumed, wherever the sheriff has had an opportunity to call for the requisite aid, and has proceeded with firmness and energy, the body of the county has proved adequate to the service of criminal process, and to the arrest and detention of some of the most forward of those engaged in the armed resistance against him.

The power of the county is first to be exerted by the officers of the county, aided by the body of the county; and only when representations made to the Governor shall satisfy him that this power is insufficient to maintain the supremacy of the law, can he interpose and order a military force from other counties to aid the resisted sheriff and his *posse*. This is in strict conformity with the theory of the system, and with its healthful action. The inhabitants of the vicinage are the most directly and deeply interested in suppressing violations of the law, detecting and punishing crime, and preserving peace and order and security in their neighborhoods, and to them the law first looks for its maintenance and execution.

The principal disturbances, of recent date, have been confined to the counties of Columbia and Rensselaer, and in the former county several arrests of persons concerned in resisting the sheriff, and suspected as accessories, or principals, in the killing of a citizen of that county, and their confinement in the county jail at Hudson, called forth extensive threats of a rescue, and movements among the disguised bands, calling themselves Indians, having that avowed object. The sheriff succeeded in organizing an armed *posse* of one hundred men, and the citizens and corporate authorities of the city of Hudson, alarmed by threats of injury and destruction to the town, made application to the Governor, and received from him, upon the bond of the corporation, arms and ammunition for the use of the inhabitants. In this way the jail and the town were guarded for a week, when, as other arrests were to be made, and the disposition and efforts to rescue the prisoners seemed to be gaining extension and strength by co-operation from other counties, the sheriff and the authorities of Hudson, united in making a requisition upon the Governor for a military force from without the county of Columbia, in aid of the sheriff's *posse.*

It appearing to the satisfaction of the Governor, that a constant guard was necessary to secure the jail and the prisoners confined and who might be confined therein; that the presence of such a guard might be required until the cases of the prisoners should be finally disposed of by trial or otherwise; that the service required the strictness and vigilance of rigid military discipline, and could not be so securely performed by any organization which it was in the power of the sheriff to give the *posse comitatus;* and believing, as he did, that the character and probable duration of the service were such as were not contemplated by the law giving the power to the sheriff to summon his civil *posse,* the request was granted, and a military force ordered and placed at the disposal of the sheriff. Inasmuch as no means had been provided to subsist this force, the

sheriff was required to make that provision, but under the assurance that the matter would be laid before you, with a recommendation that you should remunerate him for the expense from the State treasury.

The report of the Adjutant General, herewith transmitted, will exhibit the amount and description of force thus called into the service of the State, with all the facts necessary to enable you to take the requisite action in regard to it.[10]

All these steps on the part of my immediate predecessor have been taken, in my judgment, from sound views of the exigencies of the public service, and were dictated by the purest intention to discharge in a safe and proper manner, a most responsible and unpleasant public duty; and I cheerfully and earnestly recommend that as early provision as practicable be made for the payment of the men, for their subsistence for the future, in case it shall be thought necessary to continue them in service, and to discharge the fair and just accounts of the sheriff of the county of Columbia, for their subsistence hitherto, and until provision by law shall be made.

I have already said, that I felt precluded from discussing what I understand to be the real questions between the proprietors and the tenants, so long as the present position of the controversy on the part of the tenants is maintained, as it excludes all idea of arrangement, amicable or legal, upon any basis which has suggested itself to me as within my power of recommendation. Indeed, not merely the questions but the parties to the controversy, have been practically changed by the violent proceedings alluded to; and it now becomes my duty to call your attention to a struggle going on between a band of desperate men, who disguise their persons, and with arms in their hands, bid defiance to the law and its officers, on the one side, and the constituted authorities of the State, exerting the powers con-

[10] Chapter 22, passed March 14, provided for the pay of the militia called into service in December, 1844, and January, 1845, and for other purposes.

ferred upon them to preserve the peace, defend the rights, and protect the lives of the citizens, on the other. In such a controversy there is but one side for the faithful public officer to take, whatever may be his office, or the trust confided to him; and as upon me rests the express constitutional obligation to "take care that the laws are faithfully executed," which obligation I have sworn faithfully to discharge, I have no choice left, even if I were inclined, as I trust I am not, to doubt or hesitate.[s] The laws must be executed. The rights of all must be respected. The public peace must be preserved. The lives of our peaceful fellow-citizens must be protected; and crimes must be prevented or punished. So far as the law as it now is clothes me with power to secure the accomplishment of these objects, or so far as it shall be your pleasure to confer additional authority, I hope to be able to exert it calmly and dispassionately, but with vigilance and firmness; and aided and sustained by the great body of our common constituents, as I am sure I shall be, I do not entertain a doubt of complete success. Indeed, I indulge the earnest hope that already the crisis is past; that the events which have transpired have opened the eyes of those who were looked to for aid and support by these desperate perpetrators of crime, and made it certain that no further outrages will be committed through their countenance or co-operation. If this reasonable hope shall be disappointed, still the laws must be executed, fall where they may, and affect whom they may.

Permit me to suggest, in conclusion of this subject, whether the facts here presented, and others constantly appearing before the public, should not induce you so to provide for the prevention and punishment of crime, as to enable the officers of justice to reach him who disguises his person for the purpose of committing crime with less exposure to detection. That the disguises of these organized

[s] Const. 1821, art. 3, § 4.

bands, calling themselves Indians, are assumed for purposes unlawful and highly criminal,— an armed resistance to the execution of the law,— they themselves openly and publicly declare. After that offence, or other and higher crime has been perpetrated, the disguise is laid aside, and even eye witnesses upon the spot, may not be able to identify the guilty. Can there be any violation of principle in making the use of the disguise itself an offence, subjecting the party at least to arrest, examination and identification, when evidence exists to satisfy the magistrate or other officer of the peace, that the purpose for which the disguise is assumed is unlawful and criminal? It appears to me there is not; and that a provision of this character, properly guarded, would go far to aid in the prevention of the crimes which have been recently so daringly committed, under the protection of masks and other disguises. The suggestion is respectfully submitted for your careful consideration.[11]

As the authority of the Governor to deliver from the State arsenal, the arms and munitions of war for the use of the citizens of Hudson, as well as for the use of the militia called into service, may be matter of doubt and question, and as I am satisfied that the necessities of the occasion required the exercise of this discretion, I recommend that by giving legal sanction to the act, you protect him both from responsibility and censure.[12]

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[11] Chapter 3, passed January 28, authorized the pursuit and arrest of any person who "having his face painted, discolored, covered or concealed, or being otherwise disguised, in a manner calculated to prevent him from being identified, shall appear in any road or public highway, or in any field, lot, wood or enclosure," and he was to be deemed a vagrant and punishable by imprisonment in the county jail.

[12] Chapter 69, passed April 15, "to enforce the laws and preserve order" authorized the Governor to loan arms on the application of any sheriff, deputy sheriff or district attorney, or either of them, or of the mayor or recorder of any city, or of the commander of any uniform company, or to any military company, or to any number of citizens, or to any city, village or town for such time and on such terms and conditions and security as he might deem proper.

I cannot consent to close this communication without a brief reference to the interests of our States as a member of the Union. We have just passed through a presidential election second to none which has preceded it, in the importance of the principles involved, or the deep and universal interest of the whole people in the contest. At no time has the excitement of feeling been more intense, and no similar election has passed away with a more universal observance of public order. Seldom have the two great parties of the country arrayed themselves more distinctly upon the principles and measures of policy which divide them, or more unequivocally staked the result of a national contest upon the strength of their respective positions. Great issues, which heretofore have been but imperfectly joined, or sectionally tried, have now been universally recognized as presenting controlling questions in the canvass. The public lives, and the known and acknowledged principles of the leading candidates of the respective parties, as clearly as these expressed issues, defined the grounds upon which the battle was to be fought. Those candidates were supported upon the principles and opinions which, as statesmen, they had avowed and practised. The whole mass of the people were more universally appealed to, and more elaborately addressed, than at any preceding election; and every freeman in the country enjoyed the fullest opportunity thoroughly to understand all the points in dispute, before he cast his vote. The conclusion is almost unavoidable that, at no time, has the whole public mind more perfectly understood all the important questions involved in an election, or more clearly comprehended the influences to be exerted by its decision, upon the future policy and measures of the National Government.

It is reasonable to hope that, after so solemn a decision of the people, pronounced under such circumstances, the great interests of the country, which have long been kept in a condition of uncertainty and agitation, will be allowed repose; that the basis of the action of the Federal govern-

ment, on the subject of currency, may now be considered settled; that all further agitation on the question of assigning one entire branch of the permanent federal revenues to the States may be at an end; and that the principle upon which the revenues of that government, to be derived from customs, are to be assessed, is intelligibly defined. All these are subjects which deeply affect the business interests of every portion of the country, but more especially, and most deeply, the commercial and trading interests; and as the most commercial state of the Union, we have felt, with great severity, the uncertainty, the change and the prospect of change, which, for many years past, have almost constantly surrounded all these questions.

Next to a policy based upon sound constitutional principle, one which is stable, and which will realize for the future what it promises for the present, is the most important for all the great interests, agricultural, commercial and manufacturing. The issue of the late election seems to promise these benefits, at least for a time, and until the recurrence of another similar canvass shall determine whether these issues are to be re-opened; a result, in my opinion, greatly to be deprecated. No violent changes are required to conform the existing state of things to such a settled system as has been thus indicated. My entire conviction that the hands into which the administration of the Federal Government is to pass are those which will most scrupulously respect these manifestations of the popular will, induces me to express this strong degree of confidence upon these points. That respect will draw to the new administration the continued confidence of the people, and secure the results anticipated, at least during its continuance.

Some apprehensions appear to be entertained of difficulty in our foreign relations, and an interruption of the peace of the country. I confess I cannot partake strongly of such fears. I am not aware of any good cause for such

an interruption, existing in the relations between us and any other government; and I firmly believe that a calm and statesmanlike course in the management of our relations with other powers, based upon broad national principles, and governed by the rule, "to ask nothing which is not clearly right, and to submit to nothing which is wrong," will continue us in peace, or if it lead to a war, it will be such a war as every patriotic heart in the country will sustain and approve. That this rule will be the guide of the new administration, in its management of the foreign relations of the country, I fully believe.

Under these impressions in regard to our interests involved in the administration of the National Government, and in the strong assurance that the affairs of the State to be affected by your deliberations and action, will be wisely disposed of, with the continued smiles of that gracious Providence which has hitherto so signally poured its blessings upon our country, I anticipate security and peace for our constituents, and prosperity for the State.

SILAS WRIGHT.

Albany, January 7, 1845.

SPECIAL MESSAGES.

January 8. To the Assembly: Transmitting the annual report of the Adjutant General, with the remark that it would furnish an accurate account of the military forces which had been called into the service of the State as mentioned in the annual message. [See note 10.]

January 10. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, 10*th January*, 1845.

"Not having observed, at the time of the transmission of my annual message, that our statute seems to require that notice should be given to the Legislature of vacancies existing in the offices of senators of the United States

from this State, the subject was not adverted to in that communication. The resignations of both the late senators from this State have since been placed in my hands, by the late Governor; the one received by that officer on the twenty-first, and the other on the twenty-sixth of November last.

I communicate the fact that these resignations were then made, as a notice to you that the offices of both the senators from this State became vacant during the last recess of the Legislature. The places are now filled by executive appointments, and, in conformity with the statute referred to, will call for your early action.[13]

SILAS WRIGHT."

February 3. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *February* 3, 1845.

"I transmit, herewith, the annual report of the Commissary General, and take the occasion to invite the attention of the Legislature to the information communicated in relation to the condition of the State arsenal in the city of New York, and to the negotiation between this State and the United States for the sale of the fortifications on Staten Island to the latter.

It will appear that definite terms, for the sale of the State property upon Staten Island, were long since given to the proper federal authorities, which still await the action of that government. If the Legislature shall not see fit to modify those terms, the only desirable action would seem to be that most likely to induce an early decision by the federal authorities upon them.

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[13] The senators who resigned were Silas Wright, who had been elected Governor, and Nathaniel P. Tallmadge. November 30, 1844, Governor Bouck appointed Henry A. Foster, in place of Mr. Wright, and Daniel S. Dickinson in place of Mr. Tallmadge. On the 18th of January, 1845, the Legislature elected John A. Dix to succeed Senator Wright, and Daniel S. Dickinson to succeed Senator Tallmadge.

The Commissary General suggests sending an agent to Washington for this purpose, but as legislation only, is required, and as the subject is shown to be before Congress, in the shape of a bill reported from the appropriate committee, it would seem to me that a prompt expression of the Legislature, calculated to draw the attention of the representatives from the State to this bill, would be more likely to secure the desired result.

The various expressions of the executive officers of the United States upon this subject, show that they are fully impressed with the importance of the purchase, to the United States; and do not leave any ground to apprehend either difficulty or delay in bringing the negotiation to a close, in case Congress see fit to invest them with the necessary authority, and to place at their disposal the requisite means.

I respectfully ask the attention of the Legislature to another subject discussed in this report. I refer to the loan of State arms to companies of the militia not called into the service of the State. The practice has been indulged, for several years, and many of the arms from the State Arsenal, have been thus loaned out, upon bonds supposed to be sufficient when taken, to secure their safe return.

Still, serious doubts have been entertained, whether the law authorizes this disposition of these arms, at the discretion of the Executive, and the subject has been repeatedly brought before the Legislature, without so far as I am aware, having secured either its action, or expression, upon this point.

My immediate predecessor, in one of his annual messages, expressed his strong doubts as to his authority to make these loans, and urged that further legislation might be had, but stated that he had concluded to pursue the practice, which he found in existence, unless the Legislature should signify its dissent.

My examinations have satisfied me that the authority does not exist under the law as it is, and I shall therefore

be constrained to decline all such loans of the public arms, unless the authority to make them shall be conferred. Several applications have already been refused upon this ground, and as they are frequent, and a suspension of the former practice may seriously affect the formation, and extension, of uniformed companies of the militia, the subject is again respectfully, but earnestly, urged upon the attention of the Legislature.

If the practice is to be continued, it should be not only expressly legalized, but regulated by distinct enactments as to the security to be required, the manner of ascertaining the sufficiency of the sureties; the facts upon which loans of arms shall be made; the mode of ascertaining periodically the condition of the arms loaned; the continued ability of the sureties, and the like. [See note 12.]

SILAS WRIGHT."

February 5. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *February* 3, 1845.

"I herewith transmit a memorial from the pilots of New York, which has been placed in my hands by a committee, from the body of the pilots, with a request that I would cause it to be laid before the Legislature, and invoke its consideration of the subject of it. I deem it but just to that class of public commercial agents to comply with their request.

Without entering upon the discussion of the question, as to how far the Constitution of the United States has made the regulation of pilots and pilotage one of Federal, or of State jurisdiction, it is sufficient for my purpose to remark, that the only action of Congress, upon the subject, from the establishment of the Federal Government up to the year 1837, was, by a law passed on the 7th day of August, 1789, to refer the whole matter to the legislation of the States, until its further action.

The loss of a couple of vessels, with numerous lives, in or near the harbor of New York, during the early part of the winter of 1836–7, gave rise to many and aggravated charges of negligence and abuse against the New York pilots, and an application was made to Congress to interfere, by what was claimed to be its proper constitutional authority, and break up what was charged as a monopoly enjoyed by those pilots, under the then existing State law, leading to the negligence and abuses complained of.

Congress did interfere, and, on the third day of March, 1837, passed a law declaring that "it shall and may be lawful for the master and commander of any vessel coming into or going out of any port situated upon the waters which are the boundary between two States, to employ any pilot duly licensed or authorized by the laws of either of the States bounded on the said waters, to pilot any vessel to or from said port, any law, usage, or custom to the contrary notwithstanding."

Long before the establishment of the Federal Government, the State of New York, as a Colony, and as a State, had made the pilotage of the port of New York, a subject of legislative regulation, and after that time up to the passage by Congress of the act of 1837, before referred to, it had been subject, and only subject, to its exclusive legislation. This, with the extensive, and constantly increasing commerce of that port, had naturally raised up a body of pilots, who made piloting vessels into and out of that port their profession or calling, and who depended upon that business for the support of themselves and their families. The rigid provisions in reference to their qualifications and skill, which had, for a long term of years, characterized our legislation upon the subject, had made it a profession difficult and expensive in the acquirement, and it was the policy of those laws to give it commensurate value, by confining the business, as in other professions, to pilots duly and legally licensed. I believe I may say, that as a body

of men, during all this period, the pilots of the port of New York, would bear a favorable comparison with the pilots of any other port in the Union or in the world, whether as to their fidelity and skill as pilots, or their patriotism and respectability as citizens.

The unfortunate loss of the vessels referred to, at New York, in 1836–7, produced great excitement throughout the country, and the blame was charged upon the pilots of that port. It was charged that the monopoly they enjoyed of the business of piloting vessels, had made them negligent and indifferent, and that the pilot stations were not properly or faithfully supplied, during the inclement and dangerous seasons of the year.

Acting under the impression that these charges were justly made against the pilots, as is believed, Congress passed the law of 1837, which has been quoted, having for its object to introduce competition from the adjoining State of New Jersey, to break up the supposed injurious monopoly, and to secure vigilance on the part of the pilots.

It cannot fail to be seen that this legislation on the part of Congress, was very partial in its application, only affecting the pilots of those ports and harbors, the waters of which embraced a boundary between States. No portion of the pilots of many entire States were at all affected by it, and only those employed at particular ports, in any State. This mode of exercising a federal power, within the limits of the Constitution, has been broadly questioned. The power, if it be federal, is universal and equal over the whole Union, and if put in exercise at all, it may well be questioned whether that exercise should not also be universal and equal. The latitude of a harbor, the depth of its water, or the number of its islands, might, it appears to me, be made the rule of application, with as much show of principle, as the fact that a boundary between States passes through it.

So also the principle, that Congress can make a law of

one State operate in another, or give to a license, granted by the authority of one State, force in another, appears to me to be equally unsound and dangerous. It is assuming that Congress may, as a mode of exercising a federal power, adopt the legislation existing or prospective, of the States, and give to it federal extension and supremacy, instead of legislating itself to carry the power into effect. These objections appear to me to exist against the law of Congress of 1837, without questioning the full power of Congress to legislate itself as to the whole subject of pilots and pilotage, a power, the existence of which it is not my purpose to admit or deny, upon this occasion.

The same casualties which awakened the attention of Congress to this subject, also excited the legislation of the State to investigation and action upon the same subject.

The result of the investigation instituted was to show, as I believe, to the satisfaction of all, and to produce the universal admission, that the charges against the New York pilots were wholly unfounded, and that the loss of the vessels was in no way attributable to any negligence or fault on their part. This disposed of the ground upon which Congress was, undoubtedly, induced to attempt this partial exercise of its authority over the subject of pilotage.

The State legislation consequent upon this excitement of feeling, was an entire new law for the licensing and government of the pilots of the port of New York, which was passed on the 12th day of April, 1837, but little more than a month after the passage of the law of Congress of that year. This law opened materially the regulations for licensing pilots, and increased the restraints and responsibilities upon those who should take a license, and enter upon the business; while the monopolizing features of the former laws were entirely removed, and the fullest competition opened and invited between the pilots attached to every different pilot boat. The terms of apprenticeship necessary to entitle the apprentice to a license were materi-

ally shortened, and at the discretion of the commission constituted, persons who had served no apprenticeship could be licensed upon examination. Every pilot's license was to be renewed annually; every pilot was to give a bond with sureties, to be forfeited and paid, in case his carelessness, or want of skill, should damage the vessel or property entrusted to his care, and rigid provisions were enacted for the constant occupation and supply of the pilot stations, in which every boat was to take its regular turn. Other provisions of a rigid and onerous character upon the New York pilots, are also found throughout this law, and the charges for piloting every vessel in or out of the port are specifically fixed.

The pilots cheerfully accepted of the terms and energetically entered upon their difficult and dangerous duties under the new law, and soon found others — strangers to them, to the law of their State, and free from its restrictions and responsibilities — acting as their competitors. If they attempted to enforce against these competitors the prohibitions of the law of the State, the act of Congress of 1837, and a license from a neighboring State, were interposed, and proved to be effectual exemptions before the municipal courts. In this way, pilots who were under no obligation to supply the pilot stations, had given no bond, had served no apprenticeship, had undergone no examination, and restrained by no legal regulation of charges, were found to occupy a position of equality with them, at their own docks and in their own harbor.

Nor were they, as a universal, or even a general rule, citizens or inhabitants of another State, but residents of the same city with themselves, who having taken a license from another State, were entirely at liberty to be pilots in fair weather, and landsmen in foul, if that should be their pleasure — entirely at liberty to follow the profession of pilots during those portions of the year when the hazards

are least and commerce is most full, and to leave the stations to the regularly licensed pilots of the State, at all other times, in case they should find that course most pleasant or profitable.

Such has continued to be the state of things, since the passage of the act of Congress of 1837, and the State law of the same year; and it appears to me, that under regulations so unequal, the New York pilots have just cause for complaint. They claim that either the law of Congress should be repealed, and all the pilots of the port subjected alike to the provisions and restrictions of the State law, or that the restrictions of the State law should be removed from them, and they left, like the pilots who carry the licenses of other States, under the simple enactment of the law of Congress. To my mind this demand seems to be just, and I know of no body to which our own pilots can so properly appeal to do them this justice, as to the Legislature of their own State.

The New York pilots have, for years, applied in vain to Congress to repeal its law, and now they come to their own Legislature and ask of it to lend them its weight in the renewal of that application, or to so modify its own legislation as to place them upon an equality with others, under the law of Congress. My own impression is, that if the Legislature should consider it wise and proper to invoke the attention of Congress to the inequality and injustice caused by the law of 1837, and to the dangers to the commerce of the port of New York of a repeal of the State law, and an abandonment of all the pilots of the port to the loose and indefinite regulations of the act of Congress, the consequence would be a repeal of that act, leaving again the whole subject to the regulation of the Legislature of the State, where, for about half a century after the adoption of the Federal Constitution, it so safely reposed. In any event, I think the petitioners entitled to the

careful attention of the Legislature, and respectfully request that attention for them.

The memorial is accompanied by an argument of the questions of principle, which the petitioners supposed to be involved in their application, and I take leave to present it to the Legislature, with their petition.[14]

SILAS WRIGHT."

February 13. To the Assembly: Transmitting, pursuant to an Assembly resolution, a copy of the contract with Carroll & Cook for the printing and binding of the geological survey.

February 19. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *February* 18, 1845.

"In reply to the resolution of the Honorable the Assembly of the 17th instant, requesting me to inform that House "whether the sum of ten thousand dollars, or thereabouts, has not been set apart for this State from the United States Land Fund; and if yea, where the same is, the amount thereof, and why the same has not been received into the Treasury of this State," I have to refer the House to a communication made to the Legislature, by my immediate predecessor in office, under date of the 18th of April, 1843, which I find upon page 1003 of the Assembly Journal

[14] By chapter 40, passed April 1, all pilot laws relating to the port of New York were repealed, but persons holding licenses under existing laws were continued in office as pilots by way of Sandy Hook, and other persons might also act as pilots.

At the next session, 1846, the Legislature adopted a concurrent resolution recommending the enactment of a law by Congress "that will regulate and establish the pilot system of the United States upon equitable and proper principles, securing to the citizens of each State their just rights, and also proper competition in the business of piloting, and establishing in each State a board for the examination of all pilots before they shall be permitted to enter upon the duties of so important an office, requiring similar qualifications in all pilots."

of 1843. That communication contains all the information in my possession upon the subject of the various inquiries embraced in the resolution. The letter from the Comptroller of the Treasury, referred to in the message of Governor Bouck, I do not find upon the executive files, and therefore can only speak of it from that reference; and I have no information as to the amount of money set apart to this State, any disposition made of it, or the reasons "why the same has not been received into the Treasury of this State" other than the information found in the message in question.

I do not find that the Legislature has given to the Governor any advice or direction, in reference to this action upon the communication from the Comptroller of the Treasury, which was requested in the message referred to. I am aware that the law of Congress authorizes the payments under it to be made to the order of the Executive of the State, in cases where the State Legislature does not otherwise direct; but as the late Governor solicited the direction of the Legislature, I presume the reason of his not acting was the absence of that direction.

I was not myself aware, until the resolution of the Honorable the Assembly was placed in my hands, that this amount of money had been set apart to the State. I infer that the sum named is the dividend falling to this State, from the shares of the original fund to be distributed, set to those States which have refused to accept the money. Not feeling certain that the Legislature of this State will be inclined to take from the common Treasury of all the States money thus voluntarily left in that Treasury by a sister State, for the purpose of converting it to its own separate use, had I been aware of the state of the facts as I now suppose them to exist, I should not have felt authorized, without the express direction of the Legislature, to have drawn for the money. The same view of the matter will restrain me, for the future, from availing my-

self of the power conferred by the law of Congress to bring this money into the Treasury of the State; and I take this occasion to make the declaration, that the Legislature, if it shall be disposed to have the money drawn, may give its direction in the premises. [See note 2.]

SILAS WRIGHT."

February 21. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *February* 21*st*, 1845.

"Herewith I have the honor to transmit the final report of the Agent of the State, appointed in pursuance of the provisions of the act of 2d May, 1839, 'to procure and transcribe documents in Europe, relative to the Colonial History of this State.' The report presents a brief, but very clear history of the progress of the agency, of the difficulties encountered, and of the general results accomplished, and will be read with the interest belonging to the subject.

My pressing engagements have not allowed me time to make myself acquainted with the documents which the agent has secured, or with the expenditures which have been incurred, beyond the statements of the report now transmitted, and I cannot, therefore, speak of the degree of success realized from the establishment of the agency, or of the economy which has characterized the expenditure of the moneys appropriated.

It will be seen from the closing paragraphs of the report, that the agent is in advance, to meet the expenses which have been incurred, over and above his own compensation, for the last portion of the period of his service. His account is not submitted to me, but will, of course I presume, be ready for presentation to the Legislature, whenever its action in the matter shall require it.

The schedules of documents accompanying the report, I have not found it possible to command the time even to

read, although the transmission of the report has been delayed for some days, in the hope that so much leisure might be found. Any further delay would only abridge the time, which will be allowed to the Legislature to make these examinations, and to take the necessary action to bring the agency to a final close, and the accounts of the agent to a settlement and liquidation. Hence the report, and accompanying papers, are transmitted, without the information which enables me to make any recommendation, or even suggestions, as to the legislation called for, or the appropriations required.[15]

SILAS WRIGHT."

The following is the report referred to in the message:

To His Excellency, SILAS WRIGHT,
Governor of the State of New York.

SIR.—I have now the honor to lay before you a final report of my proceedings as Agent of the State of New York, under the act entitled "An act to appoint an agent to procure and transcribe documents in Europe relative to the Colonial History of this State," passed May 2, 1839; and of the results of my researches in the Archives of Holland, England and France.

Before, however, detailing these proceedings, it may not be out of place to refer briefly to the circumstances which led to the passage of the act of the Legislature, by which the enterprise now brought to a conclusion was sanctioned.

This agency is the result of the antiquarian spirit that has lately gained so much ground in our country. That spirit, growing and freshening with the advance of years, has been greatly strengthened and fostered by the exertions of the New York Historical Society, an institution which it is but faint praise to say, has more than fulfilled the high

[15] Chapter 246, passed May 13, provided for the final settlement of the account of John R. Brodhead, agent for procuring colonial documents, and authorized the payment to him of a sum not exceeding $1,390.98.

hopes entertained of its future value and influence, by its projectors, in the year 1804. Exerting itself laudably in times of difficulty — struggling with adversity, and braving obstacles — its important objects gradually became appreciated by the public; and in the year 1814 a memorial, drawn up by the late Governor De Witt Clinton, then vice-president of the society, stating in a clear and masterly manner the objects of the institution, was presented to the Legislature, and was so favorably received as to induce the grant of twelve thousand dollars in aid of the funds of the society. Its library to this day remains a noble monument of the munificence of the State, and of the liberality of individuals.

In this memorial, the prescient mind of Clinton suggested, in effect, the measure which it was left to after days to see carried into execution. Referring to the gaps and deficiencies in our own existing records, the papers of the Dutch West India Company and the archives of the then Government of the Netherlands were pointed out, as the sources whence materials for the Dutch portion of our history were to be obtained; and the records of the Plantation Office, (Board of Trade) in London, and the library of the British Museum, were also alluded to, as affording an important and inestimable fund of information respecting the period of our subjection to the crown of Great Britain. The public offices in Canada, it was also suggested, might contain much of interest to our historians. But circumstances for a long time prevented any direct effort being made by the society, to obtain the favorable consideration of the subject by the Legislature; and it was not until the year 1838, that any formal steps were taken in the matter. In the month of April of that year, upon the motion of Mr. George Folsom, a memorial was prepared and presented to the Legislature, urging the importance of an investigation of European archives, for the purpose of procuring those materials for the illustration of our history, which our own State records could not furnish; and praying the State to

undertake, for the benefit of the people, an enterprise the society of their own means were unable to carry into execution. This memorial, however, was presented so near to the close of the session, as to render it expedient to postpone further efforts till the next year; when, the subject having been clearly and forcibly introduced by a message from the Governor, and its importance urged upon the members of the Legislature, by the zealous and unwearied attention of Mr. John L. Stephens, the late Mr. William L. Stone, and others, an act was passed, with great unanimity on the 2d of May, 1839, authorizing the appointment of an agent "to visit England, Holland, and France, for the purpose of procuring, if possible, the originals, and if not, copies of all such documents and papers in the archives and offices of those governments, relating to, or in any way affecting the colonial or other history of this State, as he may deem important to illustrate that history;" and directing that the documents, when procured, be deposited in the office of the Secretary of State, at Albany, subject to the use of the State Historical Society.

Under this act, I had the honor to receive a commission as agent, on the 20th of January, 1841. By the general instructions, in which the views of the Executive in relation to the duties of my mission, were subsequently communicated to me, I was advised to proceed first, to Holland, and ascertain what documents required my attention there, and then to England, and to France. The inspection of the state papers of foreign governments, it is well known, is not a mere matter of course, but is considered a privilege of a high order; and is granted in most cases, only upon applications backed by high personal or official influence. I accordingly had an interview with the Secretary of State of the United States, for the purpose of procuring specific instructions to the American ministers at London, Paris, and the Hague, in favor of my agency; but he having declined giving them at that time, I embarked for Europe on the 1st of May, 1841.

On my arrival at London, on my way to Holland, I had several interviews with Mr. Stevenson, then American minister at the court of St. James; and communicated to him very fully, the objects of my mission. Mr. Stevenson, though uninstructed by the General Government on this point, interested himself at once, very warmly, in the subject; and advised an application forthwith, to Her Majesty's government, for permission to the agent to make selections and transcripts of documents in the British archives relaitve to our colonial and other history. A note was accordingly addressed to the Marquis of Normanby, on the 22d May, 1841, explaining the objects of the State in making the application, and requesting that the necessary facilities might be afforded me for accomplishing, with as little delay as possible, the purpose of my mission to England. This note was referred by the Marquis of Normanby, to Lord Palmerston, Principal Secretary of State for Foreign Affairs; and on the 20th July following an answer was returned to Mr. Stevenson, that Lord Palmerston felt some difficulty in acceding to my application; *but that if I would send to him a list of any particular documents I wished to obtain,* his lordship would have them examined by some competent person, and if no objection should be found to their being communicated, they should be copied for my use, on the usual terms, at my expense.

Upon the receipt of this answer to my application, Mr. Stevenson immediately replied, explaining that *no particular documents* were asked for by the agent of New York; that the object of the State was to have its colonial history written from authentic documents, many of which were presumed to be in the State Paper Office, but whose particular character could not be known, and that they could not, therefore, be described; that the limitations and restrictions imposed in former cases, were of course expected to be observed in the present, and that the agent would, in fact, consider himself subject to the control and pleasure of the department.

It was hoped that on a review of the subject, Her Majesty's Government would have looked more auspiciously upon the application, and that, so far from perceiving in it anything objectionable, would rather have viewed the objects of the State as of a purely literary, and altogether praiseworthy character; and, as such, commending themselves to the favorable and liberal consideration of an enlightened government. But the then ministry went out of office without having altered or modified their decision, which — considering the impossibility of my pointing out the particular documents, I might wish to have transcribed, without having the opportunity of learning even the date of one of them — amounted, in fact, to a refusal of the application of the State. While referring to this subject, I cannot omit availing myself of the occasion to acknowledge the warm and ready interest Mr. Stevenson took in the objects of the agency, and the personal obligations I feel for the courtesies he extended to the agent.

Meantime, pursuant to my instructions, and to Mr. Stevenson's advice, I had proceeded to Holland, with a view of investigating the archives of that country, for documents relating to our early colonial history; intending, upon the termination of my researches in the Netherlands, to return to London, and avail myself of the expected liberality of the British Government. Immediately on my arrival at the Hague, I opened the business of my mission to Mr. Bleecker, then the chargé d'affaires of the United States near the King of Netherlands. The well known interest of this gentleman in the cause of historical research, induced him to enter at once, cordially into the views of the State; and I gladly and gratefully embrace this opportunity to renew the expression of my thanks for those valuable counsels, and friendly efforts to further the objects of my appointment, which he was always ready to give, and anxious to make.

In order to obtain the necessary facilities for investigating the archives of the Netherlands, an application was

addressed by Mr. Bleecker, on my behalf, to the Baron Verstolk de Soelen, Minister of Foreign Affairs. Upon my presentation to the King, a few days afterwards, His Majesty received me in the kindest manner, expressing much pleasure with the objects of my mission, and a warm interest in its successful accomplishment. The general direction of the Royal Archives being entrusted to the Minister of the Interior, the application was promptly referred to Baron Schimmelpennick, the head of that department; and an interview was accordingly had with His Excellency, who at once informed me that he would give directions to the officer in charge of the archives, to afford me all facilities for the purpose of fully carrying out the objects of my commission, and which had been directed by the King himself, to be as liberal in their extent as the exigencies of the service would allow.

The Government Records at the Hague, are placed under the supervision of an "Archivarius," at present Yonkheer J. C. de Jonge, a gentleman of great intelligence and urbanity, and from whom I received numerous marks of kindness and courtesy, which I am happy to acknowledge. M. de Jonge, on my presenting myself at the archives, pointed out the various depositories in which the documents presumed to relate to the subject of my research were contained; and gave directions that every book and paper, known or supposed to contain information affecting our colonial history, be submitted, without reserve, to my inspection, and every arrangement made that could facilitate my labors.

The archives of the Netherlands, it is believed, constitute one of the richest depositories of historical information, to be found in Europe; commencing with the period of the Union of Utrecht, in 1579, and extending down to the French Revolution. They are contained in an immense suite of apartments in the old palace of the Binnenhof; and the documents are, in general, very well arranged, though not all equally well preserved. The greater part

are contained in parchment-bound volumes, in most instances paged and indexed for convenient reference. They consist, chiefly, of minutes of the proceedings of the States General, at their ordinary and secret meetings, kept by their *Greffiers* or clerks; in which are entered, in detail, the resolutions of that body on all matters coming before them. These registers commence with the year 1579, and are preserved in an unbroken series, from that date. The diplomatic correspondence of the Government, as well as copies of general letters, and also the instructions and commissions issued from time to time, are preserved in several separate series of books. The original papers and memorials received by the States General from time to time, are arranged on *Liasses,* or files, or are tied up in bundles, which are deposited in the *Secrete,* or *Loket,* Kas. These papers have suffered much more from the effects of time and exposure, than those in the bound volumes.

It was necessary that careful and laborious researches should be made in all these different repositories. Aided by the accurate knowledge and long experience of Mr. J. A. de Zwaan, the "Commis Chartermeester" at the Royal Archives,— and whose enthusiastic and untiring co-operation I am proud to acknowledge, contributed in an essential degree to the success of the research,— I was remittingly occupied during several months, in a toilsome investigation, in the course of which upwards of four hundred volumes and bundles of papers were carefully examined. Many of the documents were worm-eaten and decayed; and the circumstance that most of them were written in the perverse and obscure characters common in the seventeenth century, increased not a little, the difficulty of the research.

The results of my investigations in the archives at the Hague, however, strengthened the impression I had previously entertained, that though a great and valuable amount of information, on points either entirely novel, or at best but imperfectly known in our history, was there contained, the records of the Dutch West India Company,

which had the supervision and direction of the colony of New Netherland, were the grand magazine in which I might hope to find those more particular details of voyages, discoveries, emigrations, settlements and personal narratives, which would be of the highest interest to the descendants of the early settlers, as well as to the historian of New York. Relying on the information which had been given me at the Hague, that these records, commencing with the period of the organization of the company in 1621, were preserved complete at Amsterdam; an order was accordingly obtained from the minister of the colonies, directing the keeper of the old East and West India Company's papers at Amsterdam, to afford me every facility for examining the documents in his custody. The Archives of the city of Amsterdam were also presumed to contain important information relative to the colony of "Nieuw-Amstel," which the city undertook to manage in the year 1656; and a letter in my behalf was in consequence addressed by the Minister of the Interior to the Burgomaster. In further prosecution of my duty, I accordingly visited Amsterdam.

But on applying at the West India House, I was, to my infinite surprise and mortification, informed by Mr. de Munnick, the keeper, that all the books, documents and papers of every kind, belonging to the old East and West India Companies, of a date prior to 1700, had been sold at public auction, in the year 1821, by order of the Government of the Netherlands. That nothing should be left undone, however, I instituted a thorough search among the remaining papers, in the hope that something however small, might have escaped the operation of the order. But I regret to say, that this examination was attended with no favorable result; and I reluctantly abandoned the cherished hope that the archives of the West India Company would have proved a rich mine of historical wealth to our State. Examinations were also made in the papers of the

East India Company, in the hope that something might be ascertained relative to Hudson's voyage of discovery, which was made in their service. The only trace found of that voyage, is a memorandum in one of the "ship books," which accidentally escaped sale, stating that the "yagt Halve-Maan," of forty lasts (eighty tons) burthen, had been sent "towards the north," in 1608. Unwilling, however, to abandon all hope of recovering a portion, at least, of the records which had been sold, I caused advertisements to be inserted in the most widely circulated journals of the country, requesting any person who might have in his possession any documents relating to the history of the colony of New Netherland, to have the goodness to communicate with the (then) consul of the United States, at Amsterdam, Mr. J. W. Van den Broek. The kind attentions and friendly exertions of this gentleman, to further the objects of my visit to Amsterdam, have imposed on me an obligation which I would do great injustice to my feelings if I did not take this opportunity to acknowledge. It was subsequently ascertained that a portion of the records sold at Amsterdam, was in the possession of the original buyer, a person residing at the Hague. I purchased permission of him to make an examination of this portion, which was accordingly effected. Nothing, however, relating to our history was found; and the mortifying conviction is now forced upon us, that the papers of the West India Company relating to New Netherland,—which, until the year 1821, were easily attainable by the State, and whose destruction has left such a chasm in the original materials for the illustration of our annals,—are now irrecoverably lost.

The application to the authorities of the city of Amsterdam, for permission to examine their archives, was at once acceded to, in the most courteous manner, and prompt arrangements were made to facilitate my investigation of the records in the Stad-Huys. Quite a number of interesting

documents, relating to the city colony on the South River, were found, and copied.

Examinations were also made of the valuable collections of manuscripts and pamphlets in the royal library at the Hague; and the most courteous attention was shown by the estimable librarian, Mr. J. W. Holtrop.

The result of my researches in the various repositories in the Netherlands just referred to, is the procurement of sixteen volumes of transcripts, containing upwards of four thousand pages. As a full and accurate catalogue of the documents transcribed, is appended to this report, it is unnecessary to give any particular analysis of their character here. I will only remark that they commence with the year 1614, and extend down, in a tolerably complete series, to 1678, consisting chiefly of memorials and papers presented to the States General, respecting New Netherland, and the proceedings of that body in relation to the various matters from time to time brought before them, affecting the colony and its inhabitants. The act of the Legislature directed me to procure, if possible, the originals, and if not, copies of all documents illustrating our history. I applied for the originals, but the regulations of office did not allow a compliance with my request; copies were therefore made of the papers selected. Not the slightest difficulty, however, occurred in obtaining these, and not a single objection was made to my having any document transcribed I wished. The most unbounded liberality was evinced on every occasion, by the government of that country to which we trace, with such affectionate veneration, the foundation of our State, and the most friendly and gratifying interest was always exhibited by the gentlemen connected with the different departments of the administration, with whom the business of my mission from time to time brought me into communication.

The investigations in the archives of the Netherlands being now terminated, I returned to London in December,

1841, to prosecute the duties of my mission. A new ministry, with the Earl of Aberdeen as principal Secretary of State for Foreign Affairs, had come into power, and Mr. Stevenson had been succeeded by Mr. Everett as minister of the United States, near Her Britannic Majesty. At the request of the Governor, and justly appreciating the importance to the Union, as well as to the State of New York, of the objects contemplated by the State, in sending an agent to Europe, the President of the United States had instructed Mr. Everett to apply to the British Government for such facilities as might be necessary for the successful prosecution of my proposed researches in England.

Directly on his arrival at London, I had an interview with Mr. Everett, and acquainted him fully with the objects of my mission, and with the previous steps that had been taken. It need scarcely be said that the views of the State were at once warmly and zealously entered into, by the distinguished gentleman who represents our country in England, and whose friendly and valuable counsels have laid me under obligations I shall always be proud to acknowledge; or that it was fortunate for the cause of literature and historical investigation, that the Earl of Aberdeen was Foreign Secretary of Great Britain, when the agent of this state made a renewed attempt to obtain permission from Her Majesty's government to execute the duties of his mission. No time was lost; and on the 23d December, 1841, Mr. Everett addressed a note to Lord Aberdeen, recapitulating the steps Mr. Stevenson had taken with the late ministry, and expressing a hope that the requisite facilities for the attainment of the objects of my mission would now be afforded by the Government of Great Britain; for which it is claimed that it has "never permitted itself to be surpassed by any other, in the countenance which it has at all times extended to every judicious effort for the promotion of useful knowledge."

Some time subsequently, Lord Aberdeen having suggested that though it might not be possible for me to furnish a specific list of the historical documents desired, yet, that a general statement of their nature must be practicable, and would facilitate a decision on the pending application, I prepared a statement of the kind proposed, and as specific as the nature of the case admitted, which Mr. Everett transmitted to his Lordship, in a note dated 14th February, 1842, in which the purely literary character and objects of my commission were again urged, and the hope expressed that the synopsis I had prepared would remove whatever hesitation may have existed in reference to a compliance with my request.

It is unnecessary to detail the various difficulties that were encountered, and the many delays that occurred, before the desired permission was obtained. At length, on the 6th of April, 1842, I commenced my labors in "Her Majesty's State Paper Office." An order was sent by Lord Aberdeen to the keeper of the state papers, allowing me to inspect the documents in the office relative to the Province of New York with the understanding that my examinations were to be made in the presence of an officer of the establishment, and that I was merely, in the first instance, to indicate, by slips of paper, the documents I might wish to transcribe, and not to transcribe, or make extracts of any of them, until the papers so indicated, should have been examined and allowed, on the part of Lord Aberdeen.

This order was interpreted by the keeper of the state papers, with such strictness, as to cause me serious embarrassment and inconvenience. I was not allowed to make the slightest note or memorandum even of the date of a document; which, under the circumstances — the mass of papers to be gone over, being so large — was desirable, and even necessary, in order to avoid the risk of marking duplicates, and the embarrassment of depending on mem-

ory alone. This, and other points — one of which was a permission to employ copyists of my own selection, by whom the transcripts could have been made at a much less expense than that incurred by the charges of the regular clerks of the office — formed the subject of a subsequent note of Mr. Everett to Lord Aberdeen. His Lordship promptly replied, giving me the further permission desired, respecting the making memoranda, &c.; but declining to accede to the request that I might be allowed to employ a private copyist. I was obliged, in consequence, to pay to the clerks of the office, 4d. sterling, for every folio of 72 words, that they transcribed.

"Her Majesty's State Paper Office," in London, is strictly a part of the sovereign's own private library — an appendage to the Secretary of State's Office. Being entirely a government establishment, it is not considered as on the same footing as the manuscript department of the British Museum, or other institutions of a like character. No person is allowed to visit the Office, for the purpose of consulting documents, until an order for the purpose has been obtained from one of the Secretaries of State, who alone have the right of granting the privilege. This order usually specifies the series of papers to which the visitor is to have access; and its directions are strictly and scrupulously followed by the keeper. This Office is the depository of all papers and despatches that pass through the offices of the Secretaries of State which are there arranged under the superintendence of a keeper, deputy keeper, and other officials; and the accurate and perfect manner in which this is done, reflects the highest credit on the gentlemen to whom the Government entrusts this important duty. The building in which these papers are contained, was erected in the year 1830, in St. James' Park, near the Government offices; and is, in every respect, well adapted to its purposes. In addition to the papers from the offices of the Secretaries of State, (among which

is to be found a very voluminous correspondence with the governors and military commanders in America,) the State Paper Office now contains the whole of the records of the "Board of Trade," down to its dissolution, in the year 1782; which were transferred to it by order of Government, in March, 1842. Upwards of two thousand large folio volumes, relating chiefly to the American Colonies, were thus added, in one mass, to this invaluable repository of historical wealth.

The general supervision and management of the British Plantations in America and elsewhere, was entrusted by King Charles II., by royal commission, dated 1 December, 1660, to a standing council, who were instructed to correspond with the several governors, &c., and in general to dispose of all matters relating to the good government and improvement of the colonies. Subsequent commissions were from time to time issued to various individuals, substantially of the same tenor, constituting them a Council for Foreign plantations, for the time being. On the 21st of December, 1674, the king revoked the commission for the existing council, and directed their books and papers to be delivered to the clerk of the Privy Council. By order in council, dated 12 March, 1675, King Charles II. referred whatever matters had been under the cognizance of the late Council of trade and foreign plantations, to a committee of the Privy Council, consisting of the Lord Treasurer, the Lord Privy Seal, and others, and directed them to meet once a week, and report their proceedings to the King in Council, from time to time. During the reign of King James II., the affairs of the Plantations continued to be managed by a similar committee of Privy Council; and upon the accession of this monarch, (6 February, 1685) the Province of New York having devolved to the crown, it was placed under the supervision of this committee. Upon the accession of King William III., in February, 1689, a committee of the Privy Council continued to manage the

affairs of the plantations, until their growing importance suggested the necessity of a separate and distinct department of government, for their direction.

The year 1696, is the era of the permanent organization of what is familiarly known to our historians as the "Board of Trade." On the 15th May, in that year, King William III., by royal commission, constituted and appointed the great officers of state, for the time being, and certain other persons, "Commissioners during the royal pleasure, for promoting the trade of the kingdom, and for inspecting and improving the plantations in America, and elsewhere." This board was empowered and required to examine into the general condition of the trade of England, and of foreign parts, and to make representations to the king thereupon; to take into their custody all records and papers belonging to the Plantation Office; to inquire into the condition of the plantations; to examine into the instructions of the Governors, &c., and represent their conduct to the King; to present the names of proper persons for governors and secretaries, &c., in the colonies, to the King in council; to examine into and consider the acts passed in the colonies; to hear complaints, and make representations thereupon, &c., and with power to send for persons and papers. The Board of Trade and Plantations, as thus organized, was continued through the succeeding reigns, by royal commissions, until its final dissolution, by act of Parliament, in July, 1782.

The records of the Board of Trade were kept with much care and system. Their proceedings on all subjects brought before them were accurately entered in a series of large folio journals, commencing with 1696, and extending down to 1782; and which, including the records of the proceedings of the Committee of Privy Council, between 1675 and 1696, numbers about 130 volumes.

The documents relating to the affairs of each Province and Colony, were regularly and separately preserved in

two series of books; the one styled "Entries," in which were recorded all the letters and representations of the Board in reference to its concerns; and the other, entitled "Papers," in which all the original documents received at Whitehall were carefully bound up. There are 123 large volumes of "Entries" and "Papers," relating to the Province of New York, in the Board of Trade series; commencing with 1664, and extending to 1782; in which are included the documents relating to the proprietary government under the Duke of York, which were transferred to the Committee for Foreign Plantations, &c., upon the devolution of the province to the crown, on the accession of King James II. Documents of general concern to all the Provinces and Colonies, were recorded and preserved in a separate series of books amounting to sixty, entitled "Plantations General."

The records of the State Paper Office properly, are not nearly so perfect, especially in the earlier periods, as those of the Board of Trade. It was only in matters of great secrecy and concern that the provincial governors were required to correspond directly with the Secretaries of State; and it is probably in consequence of this, that there are only six volumes of New York records from the Secretary's Office, between 1696 and 1752. These volumes are composed, chiefly, of letters from the Governors to the Secretaries which are, in many instances almost literal copies of those sent to the Lords of Trade. There are very few letters from the Secretaries to the Governors during this period. There are no Secretary of States' records whatever, relating to New York, between 1752 and 1762; but after this year, and down to 1781, the correspondence is full and voluminous; that relating to this Province alone, filling nineteen large folio volumes, and comprising, as well, the letters of the Secretaries to the Governors. Besides the several series relating to the different Provinces, there is a set of volumes numbering

eighteen, entitled "Plantations General," in which the general correspondence of the Secretaries with the Colonies, and with the Superintendents of Indian affairs, &c., between 1760 and 1781, is preserved.

In addition to the volumes above mentioned, amounting in all to 356, a series of books, sixty-two in number, entitled "Trade Papers," embracing a miscellaneous collection of documents relating to trade, and foreign plantations, from 1542 to 1761, was submitted to my inspection, agreeably to the terms of the Secretary of State's order. In the course of my researches I ascertained that there were other sets of books and papers, in which documents relating to our history were contained, but which my order, as it stood, did not allow me to examine. I was consequently obliged to apply to Lord Aberdeen for further permissions, which were granted; and nearly a hundred other volumes and bundles of papers were submitted to my inspection.

Thus upwards of five hundred volumes and bundles of papers were thoroughly and carefully examined in the State Paper Office. Each document desired for transcription was indicated by a slip of paper, and subsequently re-examined by a gentleman connected with the Foreign Office, under Lord Aberdeen's direction. Such of them only, as were not objected to, were copied. The copies were made by the regular clerks of the Office, on the terms above stated; and in every instance the orthography of the originals was scrupulously followed. In making my selections, the greatest care and caution was necessary in order to avoid marking duplicates of papers, which are very numerous; and the immense number of the documents themselves, and the unexpectedly high charge for transcribing, were also causes of considerable embarrassment. I cannot close this reference to my researches in the State Paper Office, without bearing testimony to the excellent and orderly arrangement of every part of the establish-

ment; and I would be greatly wanting to my feelings if I were to omit an expression of my admiration of the politeness and attention of Messrs. Charles Lechmere, and Robert Lemon, the deputy keeper, and chief clerk. To the latter gentleman particularly, I feel under great obligations, not only for his personal courtesies to myself, but for the ready and zealous interest he manifested in the success of the undertaking I was charged by the State to execute.

Presuming that the office of the Privy Council might contain information relative to the subject of my research, I addressed a note to Mr. Greville, one of the clerks in ordinary, requesting permission to examine its earlier records. A prompt and most courteous answer was returned, complying with my request; and I examined the registers under the care of the librarian of the archives, Mr. Henry Reeve, to whose kindness I am much indebted for the facilities he afforded me. Very few documents, however, were found relating to our colonial history. There are no separate papers whatever, in the Privy Council Office, of a date prior to 1700; but the registers of its proceeding are preserved complete from the time of Queen Elizabeth.

The library of the British Museum, already a magnificent monument of the public spirit of the nation, is daily becoming more and more worthy the admiration of the world. The collection of printed books and pamphlets, whose number, though not accurately known, certainly exceeds 300,000 volumes, is one of the most perfect in existence; and there are nearly 40,000 volumes of manuscripts. The arrangements for the examination of these literary treasures are very convenient; and though, in such a metropolis as London, some regulations are necessary to exclude improper persons, those regulations are so easy to be complied with, that the library may be said to be, in effect, open to the public. Through the kind and

polite attention of Sir Henry Ellis, the principal librarian, I had every facility afforded me for examining the various printed and manuscript collections, and quite a number of transcripts were made of papers bearing upon our history. While speaking of this noble institution, I may be permitted to remark that no where else was I more strongly convinced of the indispensable necessity to the investigator, of accurate catalogues, both for printed books and for manuscripts. There is now in course of preparation a systematic alphabetical catalogue of the printed works, of such comprehensiveness, that the letter "A," alone, occupies about twenty large folio volumes. Notwithstanding the active and skillful exertions of the learned and competent gentlemen who are engaged in this important work, it will be many years before it can be completed. The manuscripts are already catalogued, and their examination thus rendered perfectly easy. The Harleian, the Lansdowne, and the Cottonian collections, by means of their accurate catalogues, which were published some years ago by Government, are almost as well known to literary men on this side of the ocean, as to those in Europe; and each addition to the manuscript department, as it is received, is at once catalogued, and thus rendered accessible.

The Archiepiscopal Library at Lambeth, has also afforded us some interesting historical materials. My application to the Archbishop of Canterbury, for permission to make researches in the library, was promptly and cheerfully complied with; and it gives me great satisfaction to have this opportunity of acknowledging the very marked liberality of the venerable prelate, at the head of the English Church, as well as the urbanity and friendly interest displayed by His Grace's librarian, the Rev. S. R. Maitland, in making every arrangement for my convenient examination of the documents in his custody.

From the various Repositories in London to which reference has just been made, I procured nearly seventeen

thousand pages of transcripts of documents relating to our history, which fill forty-seven volumes. A complete and accurate catalogue of the "London Documents," is appended to this report; by means of which, the character of each paper can be at once ascertained; and any particular analysis of the series, at present, is thus rendered unnecessary. It commences with 1614, and ends with 1782; comprising the official correspondence of the Governors of New York, from its surrender by the Dutch in 1664, to the end of the Revolution; as well as various documents of interest, received from private hands. In making my selections, the greatest care was taken, to avoid procuring papers known to be already in the Secretary of State's office, at Albany. I was unable to find any trace of the original books of records of the Indian Commissioners, which are supposed to have been removed from this State during the revolutionary war; but copies have been made of all Sir William Johnson's official letters to the British Government, which remain in the State Paper Office, as well as of the greater part of the proceedings respecting Indian affairs, which were from time to time sent to London.

It will perhaps be noticed that previous to 1674, there are no despatches or communications from the Duke of York or his secretary, to his officers in New York; and but few from them, to His Royal Highness. The first Entry Book, or Record of Letters from the Duke, commences with 1674; and from that period they are tolerably well preserved. There are several deficiencies in the series of letters from Governor Nicholls; and very few of Governor Lovelace's communications were found. There does not seem to have been any file of Governor Andros' letters to the Duke, or Sir John Worden, handed to the Committee for Trade and Plantations, when the affairs of The Province came under its supervision, upon the devolution of New York to the crown, on the accession of King James

II.; but after that date the records are much more perfect. After final organization of the Board of Trade, by King William III., in 1696, the New York papers are full and complete.

The policy of France in regard to her Canadian Possessions — the establishment of her military positions on our frontiers — and her negotiations with the Indian tribes on our borders, and within the very limits of our territory itself, are directly and intimately connected with our Colonial History; and her long struggle to maintain her influence in the northern portion of our continent, affected, in no small degree, the condition, disposition and purposes of the People of New York. It was with a view of obtaining authentic historical materials illustrating these points, that an examination of the archives of the French Government was made a part of my duty.

Having made some progress in my researches in London, and commenced the transcription of documents there, I wrote to General Cass, then minister of the United States at Paris, explaining the objects of the State, and requesting his intervention with the French Government, for the purpose of procuring me permission to examine its archives, for papers relating to Canada and New York. A simple statement of my object was all that was necessary to awaken the warmest interest of that eminent gentleman; and he forthwith applied on my behalf, to Admiral Baron Duperre, then Minister of the Marine and the Colonies, for permission to examine the papers relating to Canada in the Bureaus of his Department. An answer was promptly returned, authorizing me to make the researches I wished, without limitation; and adding, that "all the facilities he can desire, will be accorded" to the Agent. I will only remark in passing, that this liberality did not prove to be mere formal phrase.

In further prosecution of the duties of my mission, I accordingly went to Paris in June, 1842, and commenced

my examinations in the archives of the Marine and the Colonies. The general management of the French dependencies in America, having been, from an early period, entrusted to this department, its archives are very rich in matters relating to their history. They consist chiefly of instructions of the French Government to its agents in America, letters and despatches to the King and his Ministers, and original papers from the Colonial authorities to the home Government; correspondence with the neighboring English Colonies; reports of interviews with the Indian tribes; plans of campaigns, and details of battles and skirmishes, &c. &c.

The documents relating to Canada and New York are contained in two several divisions. The one is a series of bound volumes, commencing with the year 1663, and ending, very abruptly, with 1737. It comprises about 70 volumes, and contains the despatches and commissions of the King and his Ministers to the Governors and other functionaries in the French colonies. It is greatly to be regretted that the volumes subsequent to 1737, appear to be missing. The other, and by far the most fertile repository, is a series of upwards of an hundred enormous "cartons" or port-folios, each larger than two ordinary folio volumes, and in which, at the time of my examination, were placed loosely, and without chronological order, or even the least attempt at arrangement, a mass of original documents relating to Canada, from 1630, to the Treaty of Paris, 10th February, 1763. The state of deplorable confusion in which I found the contents of these cartons, can scarcely be conceived by any one who has not made personal investigations; and it must be very evident, that it was embarrassing in no small degree. It not only very greatly increased the labor of the research, but it was found that in many instances, papers of presumed importance, were missing from the mass. It is hoped, however, that under the superintendence of the present com-

petent and intelligent chief of the Archives, M. Davezac, these valuable papers, whose present confusion, (one of the results, perhaps, of the revolutionary fury of 1793), exhibits such a striking contrast to the system and order that generally prevails in the French Government Bureaus, will soon be arranged in a manner consistent with their high importance and worthy the dignity of the nation. Several months were occupied in a careful and toilsome investigation of these documents; and such as were found to relate to our history were selected and transcribed.

Knowing, however, that the archives of the Department of the Marine and the Colonies, was not the only source from whence to obtain information, an application was addressed to the Minister of War, Marshal Soult, Duke of Dalmatia, which was promptly answered by a letter stating that orders had been given for my admission to the Depôt and Archives of the War Department, "for the purpose of examining and copying all the documents relative to the operations of the French, in Canada, until the period of the Treaty of Paris, in 1763." This frank and liberal order, so characteristic of the gallant soldier who presides over the Council of Ministers, was very handsomely carried into effect by General Baron Pelet, the Director General of the Archives of the Department; to whose obliging and polite attention I am very greatly indebted for the facilities he afforded me for examining the documents in his custody. The Archives of the Department of War present a very gratifying contrast in respect to arrangement, to those of the Marine and the Colonies. The papers are chronologically arranged in bound volumes, and their examination was as agreeable and pleasant, as that of the cartons of the Marine was laborious and annoying. The documents selected and transcribed, relate chiefly to the period between 1755, and the treaty of Paris; and comprise the correspondence of the military commanders in America, with the French Government.

An application was also made for permission to examine the Archives of the Department of Foreign Affairs, for papers relating to the history of Canada, and the intercourse between that Colony and the Province of New York; but M. Guizot, in his reply to Gen. Cass' note, thus expressed himself: "I would be very happy to comply with your request, if my Department possessed any documents relative to this Colony; but the Ministry of the Marine, to which you have already applied, is the only one which can furnish you with information on this subject, Canada having always been under its supervision, and never having had any relations with my Department."

Researches were also made in the collections in the Royal Library at Paris; a most full and unqualified permission for which purpose, was granted by M. Villemain, the Minister of Public Instruction, and every facility afforded by the gentlemen in charge of this magnificent institution.

My investigations in the several Repositories at Paris, just alluded to, occupied me several months, and resulted in the procurement of seventeen volumes of transcripts, containing upwards of six thousand pages. A full and accurate catalogue of the "Paris Documents," in which every paper, its date, and a reference to its page, is indicated, being also appended to this report, renders any particular reference to their contents, unnecessary in this place. They commence with 1631, and extend to 1763; including selections of the correspondence of the Governors of Canada with the authorities in France, respecting Indian affairs, the relations with this Province, &c.; as well as the despatches of the military commanders, during the romantic and exciting period in our history, of the "French War."

As at the Hague, and in London, the regulations of the offices at Paris did not allow me to execute that part of the law establishing the agency, requiring the procurement, if possible, of original documents. Transcripts were

made, therefore, of the papers selected; and the orthography of the originals was followed as accurately as possible. In closing this reference to my researches at Paris, I cannot forbear the remark, that the proverbial reputation of the French Government, in regard to all matters connected with scientific and literary investigation, was amply sustained in the courtesies that were extended to the agent of this State; and that the historical treasures which were found in its Archives, are only equaled by the prompt and generous liberality with which they were thrown open to my inspection. That much of the good feeling exhibited, was owing to the high standing of our Minister at the French Court, is unquestionable; and I feel it a duty, not less incumbent than grateful, again to acknowledge the marked kindness of General Cass, and the personal and zealous exertions he never failed making, to render my visit to Paris most advantageous to the State.

The researches in the French archives being completed, I returned to London, and was some time occupied in further investigations, and in making preparations for my return to America. The documents transcribed at Paris and in London were carefully packed, insured, and shipped for New York; and my arrangements having been completed, I embarked for home, on the 7th July, 1844.

From this detail of proceedings, it will be perceived that the execution of my mission was attended with considerable embarrassment. This occurred chiefly in London, where the regulations of office were much more stringent than at the Hague, or in Paris. In both these latter places, there was no difficulty experienced, either in obtaining access to the Archives, or in procuring transcripts at reasonable rates. The price paid for copies, was about eleven cents for each page. In London, however, as before stated, my application for permission to employ a private copyist having failed, I was obliged to pay to the regular clerks in the State Paper Office, 4d. sterling for every folio

of seventy-two words, or about twenty-five cents for an ordinary page transcribed. This circumstance, and the unexpectedly large number of volumes to be examined, caused me much embarrassment. It became desirable to limit my selections as much as possible, in order to keep the expenses within the amount of the funds appropriated for the agency; while at the same time my duty did not allow me to pass by a single document coming under my observation, "important" to illustrate our history. I have before stated, that in the course of my investigations in the State Paper Office, I ascertained that there were other series of books and papers than those the terms of my original permission allowed me to inspect, containing information respecting our history; and that a subsequent order from Lord Aberdeen, gave me the liberty to examine a large number of additional volumes. I am far from affirming, however, that everything in relation to our history in the British archives, has been obtained; though I think it may safely be said that the greater and more valuable portion of the materials there preserved, has been secured. Had sufficient funds been placed at my disposal, I should have pursued my researches, until every thing accessible had been obtained; and should especially have endeavored to procure copies of the correspondence of the British military commanders in America, from the surrender of Canada, to the end of the American revolution.

The selection of documents was a point necessarily left to the discretion of the agent, and in the execution of this important duty, I adopted for my rule a principle which cannot be better expressed than in the words of the Editors of the "Clarendon State Papers," who say in their preface — "In so large a collection, there occurred, as might well be expected, some papers of a private nature, others of no consequence to the public. To separate these from the rest, was a point left to the discretion of the Editors, by the Trustees of the late Lord Hyde. Such, therefore,

as appeared to them in either of these lights, are rejected from publication. They have used their best judgment, and the utmost caution, in acquitting themselves of this trust; and if there are still any given which may appear to some to be scarce worthy of publication, they desire it may be considered that men's ideas of such matters are often very different, and that any particular paper, which upon being perused apart from the rest, may seem of too little consequence to merit the public notice, would yet have been very improperly suppressed, either because it may be connected with, and tend to illustrate a more interesting paper, or on account of some other circumstance which may not immediately occur to the reader."

Immediately on my arrival in New York, in August last, I waited on Governor Bouck, and acquainted him with the results of my mission. As the transcripts made in London and in Paris were unarranged, and as it was essential to their usefulness that they should be disposed in accurate chronological order, bound into volumes, and carefully indexed, before being deposited in the Secretary of State's Office, the Governor thought it best that I should occupy myself with this duty, and report fully to the Executive upon its completion. I have, accordingly, been diligently engaged in the execution of this work, since August last.

The transcripts were all separately made, and in such a manner that they could be afterwards arranged in proper order. This was necessarily the case, as the originals were not all contained in one particular set of books or papers, but were scattered through many and various series. The documents copied at the Hague, and in Amsterdam, were all arranged and indexed by myself, during leisure evening hours, while in London, in the winter and spring of 1843; and were bound and sent to Albany in the summer of that year. The "Holland Documents" occupy, as before stated, sixteen volumes, and have been for more than a year in the Secretary of State's office. In arranging the "London Documents," great care was necessary, in order

to avoid the apparent confusion of dates, caused by the use of the Old Style, which pervaded in England till the year 1752. It is believed, however, that this point has been carefully guarded, and that the plan I adopted, viz: The use of the Historical year, (which commenced on the 1st of January,) instead of the Legal years, (which commenced on the 25th March) and of the Old Style until 1752, when the act of Parliament took effect, will be found to have been judicious and to meet the approbation of the investigator. The "Paris Documents" are arranged according to the New Style, which was adopted in France in 1582.

The calendars to the "Holland," "London" and "Paris" Documents, appended to this report, have been prepared with much care, and it is hoped will be found useful. They indicate the number of each document in the volume, its general scope and character, its date, and its page; and thus, persons at a distance will be enabled to ascertain at once, the contents and the bearing of each paper in the whole series of eighty volumes of European Transcripts.

By the act of the 2d May, 1839, establishing the agency, the sum of four thousand dollars was appropriated towards defraying its expenses. On the 11th of April, 1842, a further sum of three thousand dollars was appropriated by law, for its prosecution; and on the 13th of April, 1843, a further sum of five thousand dollars was appropriated by the Legislature. These several appropriations, amounting to twelve thousand dollars, have been drawn from the treasury and entirely exhausted in defraying the expenses of my mission; accurate accounts for which have been rendered to the Comptroller. I will only add, that I have advanced from my own private means, a considerable amount in addition, which has been applied to defraying the expenses of transportation, insurance, binding, and other incidentals, connected with the arranging and cataloguing of the documents; in which duty, as be-

fore stated, I have been constantly occupied since the month of August last.

I have endeavored to lay before your Excellency, as full and as concise a report as possible, of the execution of the duties of the agency I had the honor to have entrusted to me by the Government of my State. The whole question of this agency, and of its results, is now before my fellow citizens, and to their judgment it is cheerfully submitted. Under any circumstances, and in any event, and however unworthy the instrument selected to execute her high commission, it must ever be a source of proud reflection, that the State of New York — not less faithful now, in her time of power and greatness, to her honor and to her fame, than in her day of difficulty and oppression to the principles she then so fearlessly asserted — has been among the foremost of the confederation to vindicate her self-respect to the world, by rescuing from obscurity and long neglect, the scattered memorials of her colonial existence, to place them side by side the records of her independent progress.

I have the honor to be, Sir,

Very respectfully,

Your Excellency's obedient servant.

J. ROMEYN BRODHEAD.

Albany, 12th February, 1845.

The report is accompanied by a calendar of the documents procured and filed in the office of the Secretary of State.

April 25. The Assembly Journal states that "a message from the Governor was received, informing that the bill therewith returned, entitled 'An act to erect the town of Ossinsing in the County of Westchester,' was, in his opinion, a bill requiring the assent of two-thirds of all the members elected to the Assembly to become a law."[h]

[h] Const. 1821, art. 7, § 9.

The subject was referred to the committee on two-thirds bills, and on its report the bill was again passed, this time by a two-thirds vote, and became chapter 122.

May 13. To the Assembly:

Veto of a bill entitled "an act in relation to the canals."

"A bill originating in your honorable body, entitled 'An act in relation to the canals,' has been placed before me for my approval and signature. I find myself unable to approve this bill, and therefore, in obedience to the Constitution, return it, with my objections.

The first section of the bill appropriates one hundred and ninety-seven thousand dollars from the revenues of the canals, and commands its payment by the Commissioners of the Canal Fund, for the following objects, and in the following proportions, namely:

1. Twenty-five thousand dollars 'for the re-construction of such locks on the Crooked Lake canal' as the Canal Commissioners shall judge necessary to ensure the safety of navigation on that canal.

2. Eighty-two thousand dollars 'for the purpose of completing and bringing into use such works on the Erie Canal enlargement as the Canal Commissioners shall decide will best promote the interests of the State, and the facilities of navigation.'

3. Fifty thousand dollars 'to be expended upon the Genesee Valley Canal, for the following objects, to wit:

1. For the purpose of preserving the work on the Genesee Valley canal, which has been finished and not brought into use;

2. Or which has not been finished;

3. And the materials that have been procured and paid for, or estimated to contractors for such work;

4. And for the purpose of completing the construction of such portions of the unfinished work on the said canal, as the Canal Commissioner shall be of opinion will be the most economical for the interest of the State.'

Twenty thousand dollars to be expended upon the Black River canal south of Boonville, for the same objects as those specified in relation to the Genesee Valley canal;

And twenty thousand dollars to be expended upon the Black River canal north of Boonville, for the same objects.

I have used the language of the bill, as far as I could, and make my statement of the provisions clearly intelligible, and have stated fully and truly the provisions of the first section of it, if I understand them correctly.

Against the first expenditure authorized, namely, the reconstruction of such locks on the Crooked Lake canal as the Canal Commissioners shall judge necessary to ensure the safety of navigation on that canal, I make no objection. On the contrary, the information I have been able to obtain, induces the belief that the expenditure would be a proper one, and may become necessary to the navigation of the canal.

Against the second expenditure authorized for the purpose of completing and bringing into use such works on the Erie canal enlargement, as the Canal Commissioners shall decide will best promote the interest of the State, and the facilities of navigation, I should not find myself compelled to interpose objection. The enactment, it is true, does not follow the guarded precedent found in chap. 278 of the laws of the last session, where the rule of expenditure was a previous determination that it was better economy, and more for the interest of the State, to complete and bring into use the new work, than to repair and continue in use the old. Yet the information I have been able to obtain from official and authentic sources, authorizes the belief that the sum of eighty-two thousand dollars, proposed to be appropriated to this object, might be expended upon the Erie canal enlargement, in completing and bringing into use new locks and other structures, within the rule laid down in the act of the last year; and the Legislature cannot entertain a stronger confidence than I do in the

judgment of the board of Canal Commissioners, so to direct this expenditure as to bring it within this prudent rule, or as near as possible to it.

While the magnitude and condition of the public debt, and the state of the revenues applicable to its payment, shall be such as to require a continuance of the suspension of the public works, this rule appears to me to be manifestly the safe and proper one, as to the unfinished and partly completed new works; and if the enactment under consideration had left it to the judgment of the Canal Commissioners to complete and bring into use such works only, on the Erie canal enlargement, as would promote the interest of the State, and the facilities of navigation, the provision would have been less objectionable. It is not so. The mandate upon the Commissioners of the Canal Fund, to pay the money appropriated, is imperative, and of course, as I suppose, the implied obligation upon the Canal Commissioners to expend it, upon the objects specified, is equally imperative. If they cannot find those objects, the completion and bringing into use of which will be 'better economy and more for the interest of the State,' 'than it is to repair and continue in use the old works,' in the language of the law of the last year, they must select such as, in their judgment, 'will best promote the interest of the State, and the facilities of navigation,' in the language of this bill. That is, if they cannot find those works, which can be completed and brought into use more economically and better for the interest of the State, than to repair and continue in use the old works, they must select those which they shall decide will come the nearest to this rule of expenditure. This is my understanding of the fair construction of the provision, and yet, as the information I have received satisfies me that the Canal Commissioners can find unfinished works upon the Erie canal enlargement, upon which the amount of this appropriation may be expended, without a violation of this safe rule, I should not be com-

pelled to withhold my assent from this enactment of the bill.

I have come to the same conclusion in relation to the three first objects of expenditure upon the Genesee Valley canal, as they are found specified in the bill, and are above enumerated, viz:

1. To preserve the work which has been finished and not brought into use.

2. To preserve the work which has not been finished.

3. To preserve the materials that have been procured and paid for, or estimated to contractors for such work.

These are expenditures to preserve, protect, and save work which has been done at the public expense, and materials which were required in the prosecution of that work, up to the time of its suspension, for the want of the necessary means to prosecute it to completion, and must therefore be considered as expenditures dictated by economy and the best interests of the State, if the works themselves and the materials for their further prosecution, at a future day, are worth preserving. Should this point be considered a questionable one, it is not a question for me to decide. That decision must be left to that Legislature, which, having the means at its command, shall be called upon to authorize the resumption and completion of these works. The present Legislature has, by the passage of this bill, pronounced its judgment in favor of the present preservation of the works and materials, in the condition in which the suspension has left them, and that judgment I am not disposed to resist. These provisions of the bill, therefore, if unconnected with others which are insuperably objectionable, I should approve.

The same remarks will be applicable to the appropriation for the Black River canal, so far as the expenditures are directed to be made for the preservation of the works and materials; and the language of the appropriation, referring to that for the Genesee Valley canal, is 'for the like purposes, and to be expended in the like manner.'

This brings me to the provisions of the bill which I find myself unable to approve. That relating to the Genesee Valley canal is enumerated above, under the fourth head of expenditure upon that canal, and is, by the force of the language last above quoted, in effect, repeated in reference to the Black River canal. The expenditure upon both is directed to be for the purpose of completing the construction of such portion of the unfinished work on the said canal as the Canal Commissioners shall be of opinion will be the most economical for the interest of the State. This enactment I am compelled to consider as putting an end to the policy of a suspension of the public works, until the debt of the State shall be brought within the safe and certain power and control of its revenues, without taxation upon the people; and as a distinct resumption of those works, under circumstances quite as objectionable, in reference to the provisions and policy of the suspension act of 1842, and the other legislation, previous and subsequent, upon the same subject, as such a resumption would be, without any forms of limitation upon the expenditure.

I am well aware that this bill preserves the forms of limitation, and that its friends appear to have convinced themselves that its provisions are in strict accordance with the provisions and policy of the suspension act, and of course, I presume, with the other legislation to which I refer. In this view of the enactment in the bill, now under immediate consideration, I am wholly unable, after the most careful examination and mature reflection, to concur with those who hold these opinions, and hence my inability to approve and sign the bill itself, while this provision constitutes a part of it. I will proceed to state the grounds of my dissent, and my objections to the enactment, as concisely as shall be consistent with a clear and full understanding of them.

The assumption upon which the appropriation in the first section of the bill rests is, that there is a surplus of the

canal revenues, equal to the sum thereby appropriated, over and above all the requirements of the suspension law of 1842, which surplus is open to the free disposal of the Legislature, without any infringement upon existing pledges of the public faith or any violation of the sound policy declared and established by the passage of the suspension act. At least it appears to me that the appropriation rests upon the assumption of these premises, and my objections grow out of my belief, that these premises are entirely erroneous.

In the first place, if the surplus assumed did, in fact, exist beyond the express requirements of the act of 1842, and beyond a sound and faithful adherence to the policy of that act, I do not think the Legislature could make the appropriation of it, for a resumption of the work upon the unfinished canals, without a direct infringement upon numerous and long existing pledges of the public faith, and pledges too, which are now pressingly calling for fulfilment and redemption.

The first of these pledges, to which I propose to refer, is that contained in the law authorizing the construction of the 'Cayuga and Seneca Canal,' which was passed on the 20th day of April, 1825. That law declares that 'the moneys appropriated shall form a part of the canal debt, and be repaid out of the Canal Fund.'

On the same day, the 20th of April, 1825, a law was passed to authorize the construction of the 'Oswego Canal,' which declares, 'and the said funds hereby appropriated shall form a part of the canal debt, to be repaid by the Canal Fund.'

At the time when these laws were passed, the terms 'Canal Fund' had a definite signification, well known to the public creditors of the State, and to those who proposed to become such. It was that sacred fund, set apart and pledged by the constitution of the State, for the security of those who should make loans of money to it for

the prosecution of its great undertakings, the completion of the Erie and Champlain canals. It was the fund which had embodied the public confidence, not merely in our own country, but in Europe also, and had raised the credit of the State to a proud elevation. A pledge of this fund, a promise of payment out of it, would be sure to command loans upon favorable terms, and without embarrassment, or delay. It would do that almost without a reflection as to the promise of productiveness of the work proposed to be constructed with the money advanced.

Those who scanned the constitution closely, or listened attentively to the discussions which attended the passage of these laws, were aware that the pledge of the constitution did not reach these appropriations; but they saw it declared that the Legislature possessed the power to pledge the fund, subject to the pledge which the constitution had placed upon it, and that these appropriations would be the first liens upon that rich fund when the constitutional pledge should be redeemed.[1] These declarations were palpably true, and that they secured the confidence of the public was demonstratively manifested in the avidity with which capitalists sought and took the loans for the construction of these canals.

The law for the construction of the Chenango canal, passed on the 23d of February, 1833, contains the next pledge upon this fund, to which I propose to refer. It authorizes the loaning of one million of dollars; declares that the loans made under it shall be paid after the close of the year 1845, 'or sooner, if the debt now charged on the canal revenues shall have been paid;' and after pledging the tolls to be derived from the canal, when made, and all gifts, grants and donations which might be made to the State on account of the canal, as a fund for the payment of the interest and principal of the sums borrowed for its construction, contains this section:

[1] Const. 1821, art. 7, § 10.

'§ 7. If the funds appropriated in the preceding sections shall not prove sufficient to pay the costs and expenses of the Chenango canal at the time when the certificates of stock shall become due, then it shall be the duty of the Commissioners of the Canal Fund to pay the same out of any moneys which may be on hand, belonging to the Canal Fund, which may not be pledged by the constitution of this State.'

The last of the stock issued for the construction of the Erie and Champlain canals, was made redeemable on the first of July, 1845—July of the present year. Then the constitutional pledge was to be removed from the Canal Fund, by the final payment of the Erie and Champlain canal debt.

The whole of the stocks for the construction of the Oswego canal, $421,304 in amount, and $150,000 of those for the construction of the Cayuga and Seneca canal, were made redeemable on the 1st of July, 1846, just one year after the final payment of the Erie and Champlain canal debt, and the redemption of the Constitutional pledge.

The law above referred to, for the construction of the Chenango canal, required the $1,000,000 of stock to be issued under it, to be made redeemable 'after the year eighteen hundred and forty-five,' which is to say, on the first day of January, 1846, six months before the Oswego and Cayuga and Seneca canal stocks would become payable, and directed the Commissioners of the Canal Fund to pay the same out of any moneys which may be on hand belonging to the Canal Fund, which may not be pledged by the Constitution of this State.

Subsequent legislation, in furtherance of the construction of this canal, increased the amount of Chenango canal stocks redeemable on the first of January next, from $1,000,000, authorized by the first act above referred to, to $2,362,535.66; and that amount of Chenango canal debt is now payable on that day.

Here the pledges made in the laws authorizing the loans for the Cayuga and Seneca and Oswego canals, were completely circumvented, unless the Canal Fund should have the ability to redeem all the three pledges on the days named.

The Chenango stock was made first redeemable, and the direction to the Commissioners of the Canal Fund to pay it out of any moneys on hand 'which may not be pledged by the Constitution of this State,' gave to that stock positive priority, as the pledge in favor of the Cayuga and Seneca and Oswego stocks was not a constitutional, but a legislative pledge.

Is the Canal Fund to possess the ability to pay the $2,362,535.66 of Chenango canal stock on the first day of January next, and the $571,304 of Cayuga and Seneca and Oswego canal stocks, on the 1st day of July next, and to meet the appropriation made by the first section of this bill? No one expects it, or pretends that it can be so. It is not to be able to meet the payments of the stocks alone, in any way but by new loans, which are not yet authorized by any law.

Still, are not these pledges in favor of the holders of these stocks binding upon the faith and honor of the State? Are those made to the lenders of the money with which the Oswego, and Cayuga and Seneca canals were constructed, less solemn and obligatory, because a subsequent Legislature interposed a pledge in favor of the holders of a much larger amount of the Chenango stocks? So far from seeing any release from these solemn pledges of the public faith to private citizens in this conflicting legislation, I am able to see only increased obligation, and especially upon this Legislature, the last which is to meet in the State, before the day of payment, under one of these pledges, is to arrive—the Legislature which must provide the means to redeem these pledges, or they must be forfeited.

I confess my inability to find anything in the suspension act of 1842, or in any other law, which releases us from the full obligations of all these pledges to our public creditors, and I cannot bring myself to believe that the oath I have taken, will permit me to consent to appropriations of the moneys of the Canal Fund to objects not indispensable to the preservation of the property of the fund and the productiveness of its revenues, in open disregard and willing violation of the faith of the people of the State, thus trebly pledged. It does not relieve my sense of duty, to say that the debts cannot be paid at the day, in any event, and that the only question is, whether we shall pay a comparatively small sum more, or less, on that day, as, in either case, our faith will be equally broken. The debtor who pays all it is in his power to pay, may claim to have saved his principles and his honor, though his faith and promise be broken, but he, who does less than this, may not be able to sustain this claim.

It has been said that these certificates of stock are not made payable upon any day certain, 'but at the pleasure of the State,' after a day named in the certificate, and therefore that the faith of the State is not pledged to pay at any precise period, but only when it pleases to pay after the day named. To my understanding, the faith and honor, and pleasure of the State, used in reference to obligations of this description, are, practically speaking, terms of like meaning and import. What is the obligation of the bond, or the promise of a sovereign state, but its pleasure? What is its faith, or its honor, but its pleasure? It pays its bond, or repudiates it, at its sovereign pleasure, and no power on earth, unless it be another and more powerful sovereign state, can coerce it, or enforce the bond. It fulfills its promise, or breaks it precisely as its sovereign pleasure shall dictate, and who can bring suit, or levy an execution? It preserves its faith, and maintains its honor, or throws both to the winds to gratify its sovereign pleasure, and who shall

set bounds to the indulgence of that 'pleasure?' Just as much then, is the obligation to pay at all dependent upon the pleasure of the State, as the time of that payment, when the day to make it is named in the bond. This language, in the obligation of a sovereign state to a citizen, was probably introduced in deference to the sovereignty of the august contracting party, and as a signification that it could not be coerced, and that its pleasure is its only pledge of payment. The phraseology is believed to be uniform in stocks of this description.

It is certainly uniform in the stocks of this State, and was inserted in all the scrip issued under the constitutional pledge, which was made to secure the payment of the Erie and Champlain canal stocks, as fully as it is found in the Chenango, Cayuga and Seneca, and Oswego stocks. Indeed all, or nearly all of our laws authorizing emissions of public stocks, refer to the 'act to improve the funds and provide for the redemption of the funded debt of this state,' and declare that the certificates of stock shall be issued in the manner directed by that act, and it prescribed the form of the certificate, and inserted the phrase payable at the pleasure of the State after a day named, which has universally, hitherto, been held by the whole world, and admitted by the State itself, to be the day of payment. This act was passed in reference to the war debt, and long before any canal stocks were issued.

The same phraseology is believed to be universally inserted in all public stocks issued by the United States, and if the view which I have presented of the obligations of a sovereign state be sound, it is language as strongly obligatory as such a State can properly or usefully employ.

I find myself, however, relieved from the necessity of extending remarks farther upon this point, as a reference to the annual report of the Commissioners of the Canal Fund for the year 1841, Assembly Document No. 4, pages 38 and 39; to the like report for the year 1843, Assembly

Document No. 26, page 3, and to the report of the committee of ways and means of the House of Assembly of 1842, Document No. 88, being the report upon which the suspension act of 1842 was predicated, pages 22 and 23, will present a body of authority, a force of argument, and a concurrence of opinion, settling the construction I put upon these certificates, if weight of character, and conceded financial experience and skill, drawn from both the great political parties of the State, can settle it. In those reports the palpable idea is strongly presented, that, under the opposite construction, the outstanding stocks of this State are practically irredeemable, and our present load of debt is to remain perpetually upon the taxpayers of the State, in case it shall be the pleasure of each succeeding legislature to direct the means provided for its payment, to some new object of expenditure; a construction which our yeomanry, upon whom taxation always falls most heavily, will not be likely, willingly, to adopt, even where there is reasonable doubt.

Entertaining these views, I am constrained to consider these pledges as resting upon the moneys of the Canal Fund, after the constitutional pledge shall have been finally redeemed on the first day of July next, and that this Legislature cannot, without a direct infraction of them, divert these moneys, or any portion of them, to new objects of expenditure not connected with the protection and preservation of the property of the fund and its revenues, and leave these stocks unpaid at the times fixed for their payment. These are pledges, as it appears to me, above and beyond any provisions contained in the suspension law of 1842, or any provisions which could have been rightfully or properly enacted in that law or any other.

The law authorizing the construction of the Black River canal, passed on the 19th day of April, 1836, contains a pledge upon the Canal Fund in the precise language of that above copied from the Chenango law, with the addition

of the words, ' or not otherwise appropriated,' thus obviating the conflict with prior pledges of a like character, which the provision in the Chenango law produced. The pledge in this case is, that the stocks shall be redeemed by the moneys of the Canal Fund, ' which may not be pledged by the Constitution of this State, or otherwise appropriated,' and stocks were issued to the amount of $800,000 upon the faith of this pledge, and made redeemable on the 1st day of January, 1851.

An exactly similar pledge to that last recited is found in the law to authorize the construction of the Genesee Valley Canal, passed on the 6th day of May, 1836, and $2,000,000 in amount of stocks, made redeemable on the 1st day of January, 1861, were issued under that law.

These again are pledges upon the Canal Fund and its revenues, older than the suspension act of 1842, and cannot, in justice to the holders of these stocks, or without an infraction of the public faith, be considered as released or weakened by any of the provisions of that law. There may be provisions of a like character in other laws authorizing loans for the various canals, as time has not permitted me to examine all that legislation, nor would a reference to other like pledges strengthen the argument which it has been the design of these references to present.

It is not contended that these pledges, resting upon the Canal Fund, interdict the Legislature from making any appropriations from the canal revenues for objects of new expenditure, until all these debts are paid, but simply, that the Legislature cannot, without an infraction of these pledges, equally unjust to the public creditors, and to the taxpayers of the State, make such appropriations of the means necessary to meet these debts as they fall due, and at times, and in a manner directly calculated, either to defeat, or to postpone their payment. Hence this objection to this bill, as the moneys it proposes to appropriate, not connected with the preservation and security of existing

works, or the improvement of existing navigation, but to progress with new works not expected to be brought into use by the expenditure of the appropriations, are imperiously required to meet the payment of the Chenango stocks falling due on the 1st day of January next, and the payment of which, on that day, in addition to the general obligation of payment arising out of the loan, was made an express pledge upon these moneys by the law authorizing the loan to be made.

In my annual message to the Legislature, I discussed this question in a more general manner, and derived my conclusion that the payment of those portions of the canal debt falling due, should control the resumption of the works upon the unfinished canals from the obligations arising out of the loans, and the duty to preserve the faith of the State involved in those obligations, independently of these special legislative pledges upon the Canal Fund moneys; and I still think that conclusion sound and irresistible, and only illustrated and enforced by these pledges, held out at the time of contracting the debt, to strengthen the confidence of the public creditors, upon the one side, and to give to the people of the State increased assurance of security against taxation, upon the other.

I will now proceed to examine this bill in connection with the provisions of the law of 1842, called the suspension act, and the subsequent legislation, connected with, and affecting the construction of that law, and the financial system and policy established by it.

And here I may as well make myself understood upon one point, in respect to which I have reason to suppose, from the provisions of the bill before me, there must be a difference of opinion between myself and a majority of the members of each branch of the Legislature. The law of 1842 directs the institution of a Sinking Fund, which, it is assumed would extinguish the then existing canal debt, in a period of twenty-two and an half years, as I suppose

from the close of the fiscal year 1841, though the precise commencement of the term, within a fraction of a year, cannot be very material. That was the latest period to which the accounts could have been brought up, and calculations for any fraction of the subsequent fiscal year must have been mostly based upon very uncertain estimates. The point of difference, however, to which I allude, is this: the bill under consideration appears to me to assume, and to have been framed and supported upon the hypothesis that the policy, if not the express provisions of the law of 1842, requires that the canal debt should be paid in a period of twenty-two and an half years, and that it should not be paid in any shorter period, or at a rate, during any portion of that period, any more rapid than the regular wearing away of the Sinking Fund established by that act, would extinguish it. Hence, as I have supposed, the assumption, upon which the first section of the bill under consideration seems to have been framed, that all the canal revenues, not required to constitute that Sinking Fund, and meet the other payments expressly directed by that act, may be rightfully considered by the Legislature as a surplus in its hands, subject to any appropriation it may choose to make, irrespective of any provisions of law existing prior to the passage of the act of 1842, or any obligations of the debt created by such previous legislation.

From any such construction of the provisions or policy of the law referred to, I am compelled wholly to dissent. I can find no enactments in that law, which, in my judgment, either in terms, or by fair construction, or implication, release in any degree, or to any extent, either the general obligations to pay every portion of the debt, at the day originally stipulated, or the specific pledges imposed upon the Canal Fund moneys, which I have before recited. Neither have I been able to find anything in the policy marked out by this law, or indicated in the able report of the committee from which it emanated, and upon which it

was based, to countenance at all the idea that the object, or the policy, was to postpone the payment of any portion of the debt, other than the temporary and unfunded, and to a great extent, unliquidated debt, then found to exist, and for the payment of which, then, or as it would fall due, no means were within the power of the State. So far from this, the principal labors of the committee are shown by the report to have been to devise the ways and means to meet the immediate and pressing demands upon the Canal Fund, for the interest upon the debt and the spring repairs to the canals; to place the temporary debt in a condition satisfactory to the public creditors, and manageable by the State, and to meet the payments of these very portions of the debt to fall due in 1845 and 1846. On page 23 of the report, the committee, referring to the annual report of the Commissioners of the Canal Fund of 1841, before alluded to, say that they 'agree with the Commissioners in their conclusion, that there is no alternative but to provide for the payment of these certificates, at the times when they are redeemable.' And on page 36 they say, 'until after 1845, therefore, there will be no canal surplus to be employed as a fund or means to pay interest on new canal loans.' Again, on pages 42 and 43, the committee make a detailed statement of their anticipations of means to redeem these stocks, and close with this remark: 'This would leave the sum of $1,338,734.59 to be provided for the canals before or in 1845, after applying all available present means, the canal half mill tax, all surpluses from prospective canal tolls to accrue up to and in 1845, and after borrowing, as far as it can safely be done, from the specific funds.'

After this view of the policy, which the committee thus expressly and repeatedly avows and advocates, as the policy to be established by the suspension act of 1842, it is impossible for me to conclude that that policy was a postponement of the payment of the canal debt, for the purpose

of a resumption of the public works. The act itself bears upon its face no evidence, to my mind, of any such policy intended by that Legislature, and the report of the committee, upon which the law was based, advocates throughout a directly contrary policy.

As an additional evidence that no such policy could have been intended by the authors of this law, the act itself pledges the very revenues appropriated by the bill under consideration, if they can otherwise be considered surplus revenues, for the redemption of the stock to be issued under it. The seventh section of the act is in these words:

'§ 7. The loans hereinbefore authorized to be made by the Commissioners of the Canal Fund, may, in the scrip to be issued therefor, be declared to be a charge on any money to be raised for canal purposes under the first section of this act, and on any surplus of canal revenues after the payment of the interest on the canal debt and all expenses for current damages, superintendence, repairs and collections, on all the State canals.'

This is a provision totally inconsistent with the idea that the Sinking Fund provided for in the act, was intended to be the sole reliance for the payment of the debt, and that any surplus of revenues, beyond the annual contributions to that Sinking Fund, and the other payments expressly required by the act, was to be expended upon the new works, regardless of the pre-existing obligations of the debt.

Again, it is assumed on all hands, that the policy and the provisions of the act of 1842, were to pay the canal debt in a period of twenty-two and an half years, even if its provisions, and its Sinking Fund, are only to be regarded in reference to that payment. Three years of that time, not to speak of fractions, have already passed away; and what has been the action of the law,—of its Sinking Fund, and of the subsequent legislation,—upon the debt to be paid.

The committee of ways and means, in their report before alluded to, estimated the amount of the canal debt, at the time of the passage of the suspension act of 1842, at $19,056,466.22. This the committee made up in the following manner, namely:

They found existing a stock debt of.....	$16,443,199.22
They estimated the amount of temporary loans, not funded, at.....	1,613,267.00
They estimated the arrearages due to contractors, for land damages, &c., at.....	1,000,000.00
Making the total assumed of.....	$19,056,466.22

The committee are supposed to have based their anticipations upon this amount of debt, and yet, conscious of the uncertainty of their estimates, and of the vagueness of their formation as to the outstanding and unliquidated claims in the bill they reported, (the suspension act,) they authorized loans for canal purposes to the amount of $4,204,741.52, in six several specific sums, confined to specific objects of expenditure. Portions of some of these specific appropriations were not required for the objects for which the funds were set apart, but others were found to demand much more than the appropriations; and by two several laws, passed in the following year, 1843, (chapters 48 and 240 of the Laws of 1843) a transfer of the money to different objects was authorized, and the stocks were directed to be issued, so that the canal debt has been increased to the full extent authorized by the suspension act of 1843.* Beyond this, the act, chapter 314 of the Laws of 1844, authorized a further loan of $900,000; the whole of which stock, except $45,000, has been issued, and now constitutes a part of the canal stock debt; and I am informed by the Commissioners of the Canal Fund, that the

* So in journal; probably intended for 1842.

$45,000 will be required in the course of the current year, and that in all probability a still further loan will become necessary to meet the objects for which the $900,000 were appropriated.

A statement of the present canal stock debt will, therefore, stand as follows:

The stock debt existing at the time of the passage of the act of 1842		$16,443,199.22
Stock issued under the act of 1842		3,647,136.00
Stock issued under the act chapter 48, of the Laws of 1843		320,000.00
Stock issued under the act chapter 240, of the Laws of 1843		300,000.00
Stock issued under the act chapter 314, of the Laws of 1844		855,000.00
Making a total amount of		$21,565,335.22
Less the amount of the Erie and Champlain old stock, redeemed since the passage of the act of 1842	$944,137.68	
Less Chemung canal stock redeemed	15,000.00	
Less Erie canal enlargement stock redeemed	6,000.00	
		1,015,137.68
Leaving a present balance of canal stock debt of		$20,550,197.54

It will be recollected that funds had been set apart, long before the year 1842, for the entire payment and redemption of the old Erie and Champlain canal debt. At the time of the passage of the act of 1842, it was found that a very large proportion of those moneys having been de-

posited in banks as a mode of investment, had become unavailable by reason of the inability of the banks to pay the deposits. The report of the committee of ways and means so frequently heretofore referred to, at pages 23, 24, and 25, will give the condition of these funds at the time of the passage of the law of 1842, and one of the specific loans authorized by that act was the sum of $400,000 (subdivision 6, of § 5) to supply any deficiency which might prove to exist in them, by reason of the unavailable condition of portions of the moneys. The amount of the old Erie and Champlain canal debt, then unredeemed, was $2,010,679.99, as stated in the report of the committee, page 22. The amount of that debt now outstanding and unredeemed, as ascertained from the Comptroller's books, is $1,016,542.31, showing that $994,137.68 of this old debt has been redeemed since the passage of the suspension law.

To make these redemptions, and secure the amount of funds necessary to extinguish this debt, on the first day of July next, but $100,000.00 have been used out of the appropriation of $400,000.00 made by the act of 1842, the remaining $300,000.00 of this appropriation having been transferred by the act, chapter 240, of the Laws of 1843, to the payment of arrearages to contractors and other demands against the canals.

The redemption of the $15,000.00 of the Chemung canal stock was made under the provisions of the act chapter 183, of the Laws of 1842, and of $5,000.00 of Erie Canal Enlargement stock, under the provisions of the act chapter 308, of the Laws of 1842, both laws merely permitting contractors to surrender stocks, which had been issued to them in payment under their contracts, but which were below par, and to be paid under the provisions of the suspension act of 1842, either in money, or in a stock bearing a higher rate of interest. This operation, therefore, was only a redemption of stock in form, and did not diminish the debt of the State, one dollar, but in effect increased it by

increasing the amount of stock to be issued under the suspension act bearing a higher rate of interest.

Hence the conclusion is reached that not one dollar of the State stock debt has been in fact paid off, and the stock redeemed, since the passage of the suspension law of 1842, except the $994,137.68 of the old Erie and Champlain canal debt, and that the whole of that amount, save $100,000, has been paid from funds on hand and set apart for that object at the time of the passage of that law.

What means have been accumulated since the passage of this suspension act and the establishment of its Sinking Fund, applicable to the payment of any part of this existing debt of.....	$20,557,197.54
The Sinking Fund, if permitted to retain the whole surplus of canal tolls for the years 1842, 1843 and 1844, and the whole amount received from the mill tax for canal purposes, allowing an interest at the rate of five per cent upon the accumulations of the two first years, possessed at the close of the last fiscal year, applicable to the payment of the canal debt, means amounting to.....	1,193,551.60
Leaving a balance of the debt unprovided for by these means, of.....	$19,356,645.94
In this balance of debt is included the whole remaining portion of the old Erie and Champlain canal debt, which has before been shown to be.....	1,016,542.31
And which being deducted, will leave a balance over and above the old debt of	$18,340,103.63

This balance of debt is wholly unprovided for by any present means, after applying all the surplus means of the Canal Fund for the three years, and the $278,197.56, derived from the direct tax upon the people, a balance $1,896,904.41 larger than the whole stock debt when the suspension act was passed, and $1,294,317.60 more than the committee of ways and means, who reported that law, estimated the entire amount of the canal debt to be at that time, exclusive of the balance of the Erie and Champlain canal debt.

The funds set apart for the payment of the old debt now amount upon paper to.....	$1,450,773.71
Of these funds now unavailable, the amount is	530,980.22
Leaving an available balance of.....	$919,793.49
The amount of this old debt to be redeemed between this time and the first day of July next, as has been before stated, is	$1,016,542.31
Deduct the available balance above.....	919,793.49
And there will remain a balance of this old debt, without available funds now in hand to meet it, of.....	$96,748.82

The large amount of unavailable means above mentioned, and applicable to the payment of this balance of debt, consists mostly of deposits made with banks which have failed, or are in a deeply embarrassed condition, and unable to make present payment. The Safety Fund is supposed to be liable, in cases where the banks have absolutely failed; and a law of the present session. authorizing the emission of a stock to anticipate the contributions by the banks to this fund, it is believed, may

give availability to a considerable portion of these means, within the present fiscal year. It is probable that this process may be perfected in time to bring means from this source to meet the balance of the debt which will become due and payable on the 1st of July next, and that a balance may be returned to the Canal Fund, before the close of the fiscal year, more than sufficient to repay to it the $100,000 borrowed under the law of 1842 to meet the redemption of this debt.

Such is the present condition of the canal debt, without taking $197,000 from its revenues to commence anew the public works, and the facts stated, as it appears to me, conclusively show that the operations of the law of 1842 have not yet been able to commence a reduction of this debt, and only to retard its increase, although very nearly one seventh part of the whole twenty-two and an half years have expired, and about one-seventh part of the debt ought to have been paid, or the means to pay that portion of it ought to have been accumulated. An application of all those means, as has been before seen, leaves a balance of debt all but as large as the whole estimate of debt, funded and unfunded, when that law was passed. The spirit and intention of that act was certainly to extinguish finally this debt in the twenty-two and an half years; and if that spirit and intention be observed, is there a surplus of the canal revenues now on hand authorizing a recommencement of the work upon the unfinished canals? To me no proposition seems more clear than that there is no such surplus; but, on the contrary, that there is no prospect of an extinguishment of the debt within the time limited even with the application of the whole canal revenues, unless the regular annual increases of the debt itself can be arrested. Certainly, then, I cannot believe that the express provisions or the spirit of the law will be observed, in a diversion of any portion of these revenues to new works, in the present state of the debt and liabilities of the fund.

On the 1st day of January next, there becomes due and payable of the stocks issued for the construction of the Chenango canal, the amount of.....	$2,362,535.66
If the whole accumulation of the Sinking Fund under the act of 1842, as before stated, be applied to this object.....	1,193,551.60
There will remain unprovided for.....	$1,168,984.06
If the whole amount of the unavailable funds mentioned above could be made available by January next, (a result not to be expected) there would be a balance from that source, after completing the payment of the old debt, of.....	434,231.40
This being applied, would still leave a balance of	$734,762.66

This is a sum larger by $163,475.15 than the whole surplus of the canal revenues of the last year, over and above the current payments charged upon them, independently of any payment to the Sinking Fund and those revenues for the last year, largely exceeded any former example. Here, therefore, is certainly no surplus on hand, and none to be anticipated at the close of the present fiscal year, unless the payment and redemption of this stock is to be deferred, for the purpose of applying our means to new expenditures.

In my annual message to the Legislature, I assumed that the amount of interest actually paid upon the canal debt during the fiscal year ending on the 30th of September, 1844, as reported to me from the Canal Department, was the true sum by which to determine the amount to be contributed to the sinking fund established by the act of 1842, and that one-third of that sum was the measure of that

contribution. Comparing the revenues of that fiscal year with the expenses, including this contribution thus ascertained, I arrived at a surplus of the revenues for that year, of $197,179.39. In a subsequent paragraph it was stated that the revenues for 1842 and 1843 were deficient in contributions to the Sinking Fund; but added that including the amount received from the tax, the interest upon the sums contributed to the fund, and the whole surplus of that year, the aggregate would be more than one third of the interest upon the debt, for the three years.

Those remarks will show what was the fact, that I was not very conversant with the institution and management of a Sinking Fund; that I had not regarded with sufficient care the provision of the act of 1842 upon that point, and that I had not examined at all a subsequent law, giving a construction to that provision in an important particular. From the sum assumed as an existing surplus in the bill under consideration, I cannot but apprehend that I may have been unintentionally instrumental in misleading the Legislature, or some of its members, upon this point. If that be so, while I most deeply regret the fact, it is the more imperiously my duty now to correct the erroneous impressions.

Upon inquiry, I find that to establish the Sinking Fund provided for, it was held necessary to take the debt at some specified period, and that the design was to select the period when it was believed to have reached its maximum; to ascertain the actual interest for one year upon the stocks imposing that debt, according to the several rates of interest upon the different descriptions of stock, the one-third of which aggregate amount of interest would be the fixed sum to be contributed from the surplus of canal revenues, for each of the twenty-two and an half years of the term; that, according to the provisions of the law, these annual contributions were to be made from the canal revenues proper, and not from the avails of the tax, and

that the interests annually accruing upon the capital of the Sinking Fund, could not properly be included to determine whether the limit of contributions to the fund for any given term of years, had been reached. Careful examination has satisfied me that these points have been correctly determined, and that another point, namely, that any deficiency in these revenues for any given year, to make the required contribution of the fixed sum to this fund, must be supplied by the first accruing surplus of a subsequent year, has also been correctly decided. A moment's reflection will satisfy every mind that a Sinking Fund, to accomplish the payment of a given debt in a given period, must be supplied and its accumulations sustained with mathematical regularity and precision. In reference to this case, the last Legislature, by § 4 of the act, chap. 314, of the Laws of 1844, have put an end to dispute as to the construction to be given to the act of 1842, in this respect, by directing that the contributions to this Sinking Fund from the surplus of canal revenues over and above the current expenses charged upon them, shall be such as will pay the debt in twenty-two and an half years from the passage of the act of 1842, and that any deficiencies in the Sinking Fund for previous years shall be supplied from such surplus revenues. These points being established, it will be easy to see whether any surplus in fact remains, after complying with the requirements of this law.

At the period selected for the establishment of this Sinking Fund, the amount of the debt was $20,710,335.22, and the actual interest for one year upon the stocks which composed it, was $1,127,728.16. The one-third of this interest is the fixed sum which the law requires should be annually contributed to compose the capital of the Sinking Fund to be established, which third of the interest amounts to $375,909.38. Three

times this amount is the sum which the canal revenues should have contributed for the three fiscal years, 1842, 1843, and 1844, the one equal third at the close of each year, and which would have made the capital of the fund on the 30th day of September, 1844, exclusive of any accumulations of interest upon that capital, amount to..... $1,127,728.14

The actual contributions to this fund from the canal revenues for the three years, have been as follows:

For the year 1842, being the whole surplus.....	$68,504.61	
For the year 1843, being the whole surplus.....	255,762.09	
For the year 1844, being the whole surplus.....	571,277.51	
		895,544.21

Leaving a deficiency of contributions for the three years to meet the positive requirements of this law, taking capital alone into consideration, of..... $232,183.93

This carries to the Sinking Fund the whole surplus of the last year, including the $197,000 appropriated by the bill under consideration, and yet the express provisions and requirements of the suspension act of 1842, are not complied with by the large sum above named.

And still this sum is too small. The mere contributions of capital to the Sinking Fund will not enable it to wear out the debt. The regular annual accumulations of interest upon that capital must be added to the principal at the close of each year, and thus form a new and enlarged capital again to accumulate interest for the subsequent year;

and where deficiencies exist in the contribution of the fixed sum to the capital in any given year, the interest which should have accumulated upon the deficient capital, for the time it is withheld, must be as faithfully supplied as the capital itself, or the power of the fund is impaired, and the payments required from it cannot be made.

Time has not enabled me to bring up the castings of interest in this case, nor have I deemed it material to do so, as enough is shown to put at rest the possible existence of the surplus assumed, and appropriated by the bill now submitted to me. On the contrary, the deficiencies in the capital of this Sinking Fund are now large, and the additions of the deficient interests would swell the sum of deficient revenue by a number of thousands of dollars.

Still another lien rests upon our surplus canal revenues, which must be met before any portion of those revenues can be diverted from the canal debt, if the faith of the State to the public creditors and to its taxpaying citizens is to be preserved.

The law, chapter 314, of 1844, before referred to, authorizes a new debt, imposes a new tax, and institutes a new Sinking Fund to redeem the debt it creates. The first section authorizes a loan beyond the provisions of the act of 1842, of $900,000. The third section imposes a tax of one tenth of a mill on the dollar of the valuation of real and personal estate within the State, for the payment of the interest, and the reimbursement of the principal of this loan. The fourth section provides for establishing a Sinking Fund in aid of the tax, and for its discontinuance when the condition of the canal revenues shall permit. The provision is, that all the requirements of the act of 1842 shall be complied with by payments from the canal revenues, including all deficiencies in the payments of previous years to the Sinking Fund established under that act, and that any surplus which may remain "shall in each year be reserved by the Commissioners of the Canal Fund, *and kept*

and sacredly devoted and applied as a Sinking Fund, to an amount in each year sufficient to pay the interest as it accrues, and to purchase in or to pay off within eighteen years the principal of the loans authorized by the first section of this act. And whenever the net surplus of canal revenues, *exclusive of the one-half of mill tax,* appropriated to canal purposes, and beyond the charges thereon, as hereinbefore specified, shall contribute to the Sinking Fund provided by this act, a sum sufficient, if paid each year, to meet the interest as it accrues, and redeem the principal of the loan authorized by this act, within the period of eighteen years above limited for the payment thereof, the tax authorized by this act shall cease," etc.

Thus precise and specific is this last pledge resting upon the surplus revenues of the canals, which is wholly and entirely disregarded by the bill under consideration. Upon the preservation of this pledge depends the duration of the tax imposed by the law upon all the persons and all the property of the State, and surely the Legislature has not designedly, but inadvertently, proposed its violation and virtual repeal in the passage of the bill I am now called upon to approve.

In the establishment of the Sinking Fund under the act of 1842, as before related, that portion of the canal debt contracted under this act is carefully excluded, and the $20,710,335.22 taken as the debt which constitutes the measure of that Sinking Fund, does not embrace it. This new debt is, as the language and spirit of the act requires, reserved to be made the basis of this new Sinking Fund.

It now amounts to $855,000, and the remaining $45,000 will be required, and will be added in the course of the present fiscal year.

No account has as yet been formally opened with this second Sinking Fund, because, as has been before seen, no surplus of canal revenues applicable to it has yet been yielded from those revenues, the requirements of the act

of 1842, and its Sinking Fund, calling for all, and more than all, of that surplus beyond the current annual charges upon the revenues. Surely until the demands of this pledge can be met, and this tax discontinued, there cannot be said to be a canal surplus applicable to a recommencement of the public works.

These are my objections to the bill under consideration, too hastily to be briefly stated, or stated as clearly as I could desire, though I hope in a manner to be understood by the Legislature, and by our common constituents.

I cannot yield my approbation to the bill,

Because in my judgment express pledges contained in the laws authorizing loans for the public works, now falling due and becoming payable, imperiously require that the moneys it appropriates to be expended upon new works, should be applied to the extinguishment of the debts created by those loans:

Because I think the policy involved in the passage of the bill, that of postponing the payment of the existing debt as it shall fall due, that we may use the funds for a resumption of the public works, is a direct violation of the spirit and intention of the suspension law of 1842, and unwise and impolitic in reference to the true interests of the people of the whole State:

Because the facts set forth in relation to the present condition and amount of the canal debt, appear to me to show that the effect of the operation of the law of 1842 upon the debt, influenced as it has been by subsequent legislation, has not been such as to offer any promise of a payment of the debt, in the period of twenty-two and an half years, in case the public works shall be now resumed, and portions of the canal revenues diverted from the payment of the debt to be expended in their prosecution:

Because the provisions of the bill appear to me, upon a more careful examination, directly to conflict with the positive requirements of the act of 1842, and to assume as a

surplus those moneys, which must be contributed to the Sinking Fund directed to be established by that act, if its enactments are to be obeyed:

And because the provisions and pledges of the act, chapter 314 of 1844, are expressly violated and disregarded by the appropriation contained in the first section of the bill.

I deem it not improper to add a remark in reference to the economy of the appropriation proposed by this bill. A careful enquiry of the officers who have the charge of the unfinished canals, informs me that from $5,000 to $8,000 is the utmost amount which can be economically, or profitably, expended in the security and preservation of the unfinished and unused works and materials, upon the Genesee Valley canal, and that $1,700 or $1,800 is the largest sum required for the same purposes, upon the Black River canal. This would leave, of the appropriation, from $42,000 to $45,000 to be expended in construction, upon the former canal, and from $38,000 to $39,000, upon the latter. I cannot convince myself that the expenditure of these sums, upon works so far from completion, including the array of preparation, which would necessarily be required in the re-engagement of engineers, the formal lettings for new contracts, the collection of hands and supplies, and the like, to terminate again when means so limited should be consumed, can be economically made; and I will not assume that the object has been, in any quarter, by this small beginning, to reopen to a second trial the unsupported and unsustained credit of the State, to struggle with expenditures of this character, and sustain the load of our present almost literally undiminished debt. In an economical view of the subject alone, therefore, separate from the many obligations resting upon us to make a different application of these means, these portions of the appropriation would be very objectionable, in my judgment; but having found so many reasons of principle, and of public faith, which force me to interpose objections, I merely mention this point, as

one worthy of the consideration of the Legislature, and deeply interesting to our constituents.

The act, chap. 278, of the Laws of 1844, provided a fund for the protection and preservation of these works and materials, and one which some suggest might be adequate to those objects. There are, as I am informed, balances of money realized under that act, applicable to this description of expenditure upon both these canals; but in the opinion of the Canal Commissioners small appropriations, not to exceed the sums I have named above, including the unexpended balances, may be necessary to complete the work of security and protection.

I do not see occasion to remark upon the provisions of this bill, after the first section, as I discover nothing in them which would prevent my approval of the law. The enactments of the fourth section are not so distinct and clear as would be desirable in legal provisions, and there might be some difficulty, under circumstances which might arise in determining how much money is actually appropriated, or how the $197,000 are to be paid; but as I see nothing necessarily objectionable in principle in these enactments, I pass them over with this notice.

Independently of the great objections of principle which have been urged against the passage of this bill, I am forced to consider the present a most unfortunate time to introduce the change of policy it proposes. The embarrassments upon individuals and sections of the State and the direct losses to the public consequent upon a sudden suspension of the public works, have not yet been fully ascertained and measured, in relation to the suspension of 1842. Much of the time of each legislature subsequent to that of 1842, has been consumed in the consideration of grievances and claims growing out of that suspension, and bills are, and have been, before this Legislature, containing provisions in favor of such claims which would more than exhaust any canal surplus assumed to exist by the bill under

consideration. Under such circumstances, to resume these works upon such slender means as those proposed to be applied to the resumption, must be to invite almost immediately, a second suspension with all its comparative disappointments and embarrassments to individuals and interested sections of the State, and all its losses to the public; or it must be to lay the foundation for an open abandonment of the sound, debt-paying policy of 1842, for that of a general recommencement of works of internal improvement, relying upon the unaided and already heavily tasked credit of the State for the means. If any one hopes to be able to preserve a middle line between these two courses, he hopes against experience and the natural operations of cause and effect. Payment of the debt at the day, and in strict conformity with the pledges of the public faith, must guide and control our legislation, or open expenditure irrespective of the redemption of the debt will control it. He who supposes the public works can be resumed, and their prosecution confined to the expenditure of such annual surpluses as this bill assumes and appropriates, has turned his attention much too superficially to the history of our own legislation upon the subject of public expenditures of this character, and has looked at the present condition of the other heavily indebted States of the Union, and the causes which have conspired to bring them to that condition, without the instruction which those lessons should impart. That middle line cannot be preserved. If payment of the debt is to govern our policy, a substantial, faithful adherence to that policy, a preservation of the public faith, and redemption of the public obligations, will alone inspire public confidence. If a resumption of the public works is to be the policy, a healthful and vigorous prosecution of those works alone, will, as it should, content our constituents; and any attempt to preserve a feeble and sickly and inefficient adherence to both these courses at the same time, will prove an entire failure.

Another reason why I consider the present an unfortunate time to make this change of policy, is the evidence before us of a determinate disposition in the public mind to remodel our constitutional system, in reference to expenditures of this description. Ever since the prostration of the credit of the State in 1841, and the consequent suspension of the public works and establishment of the financial system adopted by the Legislature of 1842, the attention of our people has been drawn to the necessity of some further constitutional protection against the dangers of enduring debt and perpetual taxation. Extended discussion for two years resulted in action by the last Legislature, originating and submitting to the people, previous to the last election, specific amendments to the Constitution, taking two most important positions in reference to the further increase of our public debt for these objects, namely:

1. That no debt should hereafter be contracted for expenditures like these, until the law authorizing the loan should have been submitted to the people, and expressly approved by them, by their direct votes at the polls, and

2. That no law submitted to the people for their approbation, should contain authority to make loans for but a single work or object of expenditure, and should contain irrepealable provisions for a Sinking Fund to meet the interest and pay off the principal of the debt, within a specified period.

This Legislature, elected with reference to these provisions as amendments proposed to the Constitution of the State, has expressed its sense, the one house by the constitutional vote of two-thirds, and the other by a majority in their favor, thus reflecting most truly, as I verily believe, the deliberate sense and wish of a majority of the people of the State. The propositions, however, having failed to receive the constitutional vote of two thirds in the Assembly, cannot be submitted to the people, according to the provision contained in the Constitution for its amendment,

and have therefore failed. This failure, together with that of other amendments similarly proposed and similarly failing, has secured the passage of a law for the call of a convention of the people of the State to amend the Constitution. That convention, if the call shall be affirmed by the people, as I do not entertain a doubt that it will be, is to be assembled in little more than one year from this day. Then we have every right to expect and believe that a reorganization, in a constitutional form, of our financial system, and of our powers over the use of the public credit, especially as touching the subject of internal improvements, will take place. Now, our condition is peculiarly favorable for such re-organization, be it what it may, as no work is in progress to be injuriously affected, or materially interfered with, by any change which the convention may think wise and safe. Under these circumstances, to resume the public works, make new contracts, and a re-organization for their prosecution under the old financial system which was suspended in 1842, it appears to me would only be to embarrass the convention, or disappoint the contractors, and subject the State to new losses without any promise, with the means possessed and proposed to be used by this bill, of making very material or useful advancement with the works. I must, therefore, for this reason, consider the resumption of these works at this time inopportune and unwise.

The present condition of State credit in Europe, and of the foreign relations of the country, are also considerations not unworthy of careful examination and reflection, as connected with a measure calculated either to continue our present debt, or to produce the necessity of a new if not an enlarged one.

I by no means apprehend a state of war, as a consequence of the present somewhat angry and excited feeling occasionally manifested, and connecting itself with our foreign relations; but that unfriendly discussions may take place, and be somewhat protracted, and that distrusts may be

occasioned very unfavorable to State credit abroad, having the effect to return upon the country such investments now held abroad, and giving to any failure on the part of this State to redeem any portion of its stocks on the day they fall due, an importance such a contingency would not deserve, seems to me quite probable. If, in addition to such a failure to pay, we should be seen re-opening our old system of expenditure, without strengthening our sources of revenue, the effect upon our credit might be severe. I have occasion to know that some of the ablest men connected with our moneyed institutions, and from their positions and business, accustomed to observe closely all indications from abroad touching public credits, entertain unfavorable apprehensions in relation to any departure from the safe policy pursued since 1842, while our foreign relations wear their present aspect. I would not, by these remarks, excite the slightest alarm as to an apprehended interruption of the peace of the country, but I must think that these considerations make the passage of this bill ill-timed and inexpedient.

Great as I consider the weight due to these objections, of economy, time and expediency, but for the more grave objections of principle, which I have stated in the former part of this communication, I should not be constrained to interpose my individual opinion, in opposition to that of the majority of the Legislature. The regret I feel at being compelled to do it, under any circumstances, I have not the power to express, and still my most solemn convictions assure me, that I but discharge an imperious constitutional duty, unmixed with, and uninfluenced by, a single personal feeling or interest of which I am conscious. That the consequence of my action is but a call upon the Legislature to reconsider its own, and not a necessary rejection of the bill, is a gratifying reflection; and I am not without hope that the considerations I have presented, imperfect and tedious as that presentation is, may induce the two houses

to come to my conclusion, that the bill, in its present shape, and with its present provisions, ought not to pass. If, on the contrary, these considerations shall seem to deserve no weight, and the bill shall pass, notwithstanding the objections, the harm, if any, of this communication, must fall upon myself, where it should rest, if the objections are not well founded. Should neither of these results follow, and the bill fail for a want of the constitutional vote, a majority of both houses continuing to be in its favor, in that case I shall cheerfully submit to the people of the State the decision of the issue which will be formed between myself and the majority of the Legislature, rejoicing in the conviction that the difference of opinion on my part, is unaccompanied by one personal feeling unfriendly to a single individual of that majority, and determined that the decision of our common constituents shall be submitted to by me, in the same spirit in which I have joined the issue."

The bill was not passed over the veto.

May 14. The legislature adjourned without day.

1846. JANUARY 6. LEGISLATURE, SIXTY-NINTH SESSION.

SILAS WRIGHT, Governor.

ANNUAL MESSAGE:

FELLOW CITIZENS.— We are assembled to perform the highest and most responsible duties pertaining to civil government. Other departments are charged with the administration and execution of the law. Upon the Legislature is devolved the duty of making the law. Its action is the rule of administration and execution. That action is over all and rests upon all. It binds the conduct of men to the extent of the extreme penalty of human life, and the interests of men to the extent of everything which can be held

as property. The office of the legislator is one of the highest dignity. The trust reposed in him by his constituency, is one of the gravest import. Our ambition should be to discharge this trust well and faithfully, and our expectations of honor should be measured by the strength of our consciousness that sound principles, disinterested intentions and patriotic impulses, govern our acts.

The reflection that we are the mere agents of the people, elected not to serve ourselves but them, should be ever present with us. The great elements of their prosperity are in their hands, not ours. Their own patient industry and careful frugality, and their firm devotion to equal rights and equal laws, are the foundation and the life of our institutions, and are within their own keeping. Laws are necessary to enable them to pursue this industry and enjoy its fruits; to obtain these rights and reap their benefits, burdens must be imposed upon them and their property to defray the expenses of carrying these laws into effect. These things they cannot well do in person. Hence the delegation of power to us; and the discharge of this agency is the responsible duty upon which we are about to enter. The fewest and simplest laws consistent with the security of the great objects to be attained, and the lightest burdens which their enforcement will permit, must be the best and wisest execution of the trust; the most salutary and acceptable to the constituency, and the most honorable to the representative.

If these simple principles are kept steadily in view, and permitted to govern our action, our duties will be rendered comparatively easy, their performance pleasant, and their discharge beneficial to the public. If we try our measures by the influences they must exert upon the interests and pursuits of all classes of society, and carefully compare every expenditure we authorize with the promises of benefit to the whole people, we shall escape the worst perplexities which are usually attendant upon legislation; avoid the

most serious dangers which beset our path; and lay no foundation for the complaints, which most deeply disturb the public mind.

That legislation which equalizes the benefits and burdens of government, extends the same encouragement to the enterprise and industry of all in every situation and employment, and attempts to secure no special privileges to any, will diffuse prosperity throughout a community; because, under such a system of laws, all will feel that the fruits of their industry are justly secured to themselves. On the contrary, attempts to confer favors by law upon classes or localities, produce a competition destructive to profitable industry; a strife, not to earn, but to gain the earnings of others. Such a policy may accumulate wealth in a few hands more rapidly than equal legislation, and may, to the superficial observer, present the greater show of prosperity; but the appearance is artificial and delusive, and is produced by a forced and unequal distribution of the proceeds of the labor of all. The tendency of this false system is to separate capital from productive labor, and, carried out to its full extent, will produce the singular result, that he who labors least may accumulate most, and he who works the hardest may know the most want.

A choice between these lines of policy, in the discharge of our legislative duties, cannot be difficult, and will not, I trust, be doubtful.

In presenting to you the condition of the State, a reference to its internal peace may well claim the first place.

In my annual message of the last year, it became my unpleasant duty to announce to the Legislature that the public peace had been interrupted, the laws resisted by armed force, and that my predecessor had been compelled to order into service a portion of the militia of the State, to preserve the one and enforce the other. That military force was in the field at the time that communication was made to the Legislature. In that paper I gave at length

the character of these disturbances, and, in every form which presented itself to my mind as likely to exert a beneficial influence, appealed to the tenants of the estates, between whom and the landlords of the same estates the controversy nominally existed, to change their course, and withdraw their countenance, their influence, and their contributions of money and means from the desperate men, who were making armed resistance against the laws.

At that time human life had been sacrificed, in two several instances, to the mad spirit of insubordination, and those incidents were referred to as natural fruits of such unlawful violence, and as startling warnings of worse results, if the same spirit continued to be encouraged.

These disturbances, and the proper remedies to be applied to them, occupied much of the time of the last Legislature, and among other measures adopted, was a law "to prevent persons appearing disguised and armed." The provisions of this law were so stringent, and its penalties so severe, that the confident hope was indulged of an abandonment of the use of the disguises, the protection of which, as experience had shown, constituted the principal danger. Repeated instances of flagrant outrage had demonstrated that those who would stoop to disguise their persons, in pursuit of an unlawful object, only required to have their confidence in the protection of the disguise sufficiently strengthened, to bring them to the commission of any degree of crime. In other words, the universal principle was illustrated in these proceedings, that crime requires concealment, and that he who dare not, in the open light, look the law in the face, will be emboldened, under the cover of darkness, or the protection of the mask, to outrage its requirements, and strike down its defenceless ministers.

This law had not long been in force, when it became apparent that the hopes entertained of its salutary influence were not to be realized. Confidence in the disguise became stronger than the fear of punishment, and parties

of disguised men began to show themselves in the excited districts. The county of Delaware, theretofore comparatively peaceful, became the theatre of more open and active resistance against the officers of the law, than had previously prevailed elsewhere. The assemblages of disguised men were more frequent, more numerous, and their proceedings more daring and desperate, than had characterized the disturbances in any other quarter. So also these lawless outrages and their perpetrators were met in that county more promptly, firmly, and energetically, than they had been before encountered, without the aid of a State military force; and the lawabiding citizens of the county, led on by their civil officers, to their lasting honor, overcame the resisters by their own unaided efforts.

The courts and juries of the county proved themselves as firm and faithful to the law as the body of citizens had done, and those arrested in disguise and with arms, were indicted, tried, convicted, and three of the number sentenced to imprisonment in the State prison each for the term of two years.

These energetic proceedings, appeared, for the time, to have subdued the insurrectionary spirit, as well in the other excited counties, as in Delaware, and again the hope was indulged, that if excitement had not given place to reflection, and passion to reason, at least it had been seen that the strength of the law, and the love of peace, and order in the breasts of our intelligent and patriotic citizens, were too powerful for a resistance of the character attempted, and that further efforts of that description would be abandoned.

In Delaware county nothing transpired, for months, to dispel this pleasing hope, though in the adjoining county of Schoharie, various outrages were committed; the sheriff was forcibly resisted, and was compelled to resort to the provisions of the act of the last session, "to enforce the law and preserve order," and obtain permission to raise a

guard to assist him to serve legal process. So in the county of Columbia, several gross outrages were committed upon the rights and property of private persons; and, in the month of May, one of the deputies of the sheriff of that county, while quietly walking in the highway, in company with two assistants, upon his return from executing a writ of possession, was deliberately fired upon by three several persons, from the cover of some bushes near the road, and himself and one of the assistants severely but not dangerously wounded. He was also fired upon, but without effect, while actually engaged in executing the writ. Every practicable effort has been made to discover and arrest the perpetrators of these outrages, as yet without success.

It was reserved for the ill-fated county of Delaware, however, to bring these mistaken and ill-advised disturbances to open insurrection, and to crown the long catalogue of crime with a cold, deliberate and cruel murder. On the seventh of August, Osman N. Steele, under sheriff of the county, fell, shot to death, from behind the protection of these masks and disguises, in the middle of the day, in the open field, and while quietly and inoffensively engaged in the discharge of his official duty. Surrounded by some two hundred and forty disguised and armed men and a body of spectators, and with the sheriff and two assistants within a few feet of his person, this faithful officer was murdered, and to this day no one of the actual perpetrators of the bloody deed has been identified.

The investigations before the coroner's jury were protracted and searching almost beyond example, and developed testimony, portions of which were laid before me, and left no doubt upon my mind that the crisis had arrived contemplated by the Legislature, in the provisions of the nineteenth section of the "Act to enforce the laws and preserve order;" and application having been made, by all the officers named in the section, on the twenty-seventh day of August, I declared by proclamation, the county of

Delaware to be in a state of insurrection, within the provisions and meaning of that law.

Herewith I transmit a copy of that proclamation, which will give to the Legislature the grounds upon which it was issued.[1]

The necessary orders were immediately given, to call into the service of the State three hundred men, to serve as a battalion of light infantry, from one hundred to one hundred and fifty of whom were to serve as mounted men, when the service should call for such force.

The annual report of the Adjutant General, herewith transmitted, will show more in detail the facts in relation to this force and its organization; and it, and the annual report of the Comptroller, will give the plan adopted to subsist the men and the horses, and the entire expense to the State for the pay and subsistence of the battalion.

No instance of resistance was experienced in the whole course of the service of this force, although it was assiduously employed to aid in the execution of civil as well as criminal process, and in the general execution of the law; the collection of the rents in arrear being a prominent part of the duty performed.

The arrests made by the sheriff and his officers, with the aid first of the civil, and subsequently of the military *posse,* were very numerous, reaching considerably beyond one hundred. Some thirty only of these, however, were persons charged with being present at, or parties to, the murder, the residue being in custody for minor offences, growing out of the previous disturbances in that county. An impression has prevailed, to some extent at least, that persons implicated in the transaction, out of which this murder proceeded, were, by the court of oyer and terminer, merely punished by the imposition of a fine. This is a mistake. All of those so punished were charged with, and

[1] See *post,* p. 297, for the Governor's proclamation declaring Delaware County in a state of insurrection.

plead guilty to, offences previously committed, and no one implicated in the murder, who was sentenced at all, received less punishment than imprisonment for seven years in the State Prison. Some, who pleaded guilty to the charge of manslaughter in the lower degrees, were liberated upon recognizances, and not sentenced at all, the sentences having been suspended. This mistake is corrected, to prevent misapprehension as to the proceedings of that court, and to do justice to its members.

About ninety persons, supposed to be identified as present at the time, armed and disguised and engaged in resisting the sheriff, were indicted for the murder. Of this number, little more than one-third were arrested. All these were discharged from the jail in the manner already well known to the public, except the two men convicted and sentenced to be executed. The residue of the persons so indicted are at large, having hitherto evaded the service of process, together with the still larger number not yet identified. Among these are supposed to be most, or all, of the principal leaders, and of those who actually fired upon the lamented Steele, on that fatal occasion.

The sentences of the men convicted of the murder have been, by me, commuted for the punishment of imprisonment in the State Prison for the terms of their natural lives. The grounds of my interference were set forth in a letter to the sheriff, a copy of which is herewith transmitted.[2]

As soon as it was supposed time had been allowed to restore a reasonable degree of calmness to the public mind, the Adjutant General was directed to visit Delaware, and make inquiries and examinations, with a view to the revocation of the proclamation declaring the county to be in a state of insurrection, and the final discharge of the military force in the service of the State.

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2 See *post*, p. 309, for the Governor's letter to the sheriff of Delaware County relative to the commutation of the sentence of persons convicted of the murder of Osman N. Steele.

Upon consultation, in this way, with the public authorities, civil and military, and with various prominent citizens of the county, the conclusion was formed that the time had arrived, when these steps would probably be consistent with the public security, and might be calculated to allay irritation, and promote the restoration of harmony and quiet to this distracted society. Accordingly, the proclamation of the 27th of August was revoked, by a proclamation dated on the 18th of December, to take effect after the 22d of that month, a copy of which is herewith transmitted.[3] The necessary orders were, simultaneously, issued for the discharge of the military force, on the same day.

It is due to the officers and men of the battalion to say, that the order and energy, the willing obedience, and prompt and unpretending execution of duty, which have signalized their entire service, have entitled all to the highest praise. The vigilance and discretion of the officers, and the steady fidelity of the men, prove that the latter were well commanded, and the former well served; and demonstrate that the peace of the State, and the execution of its laws, are both safe in the patriotic hands of its citizen soldiery.

No indications of a disposition to interrupt the peace of this county have reached me, since these transactions.

The opinion is now very generally entertained that the scenes of violence and armed resistance to the laws have terminated; that the disguises have been permanently discarded; and that, hereafter, legal and constitutional modes of redress for the grievances supposed to exist, will alone be attempted.

Indications of a disposition to keep up the excitement, and even the insurrectionary proceedings, continue to be manifested in individual cases; but it is to be hoped that

[3] See *post*, p. 326, for the proclamation revoking the proclamation declaring Delaware County in a state of insurrection.

such indications are confined to those who have made it their vocation to kindle these disturbances, and whose only interest in them has been the personal advantages to themselves from their existence. Hitherto the confiding tenants have listened to such advisers, not seeing, nor suspecting, the selfish impulses of interest and ambition, which prompted counsel so apparently patriotically given, until a severe experience has shown them the disastrous results of their misplaced confidence. Upon some, who were industrious, quiet, and thrifty farmers, it has brought ignominious punishment, and perpetual incarceration, in the company of felons. Others, who held like standing, it has banished from their families and their homes, and made fugitives from that justice they were taught to spurn, for the sake of following these false guides upon what was represented by them as a shorter and surer road to a redress of their alleged grievances. To all it has brought loss of property; angry and embittered feuds, in the place of peaceful social relations, and anxiety, apprehension, and distrust, to poison the happiness of the domestic fireside. These are some of the fruits which have been realized from following designing and selfish counselors; and when these tenants shall attempt to resort to the legal and constitutional modes of redress, which they now propose, they will find that there too these pretended friends have least acted the part of friends to them; and that these appeals, even if right and proper in themselves, have received nothing but prejudice from such interference.

In my former communication to the Legislature upon this subject, I stated that I considered myself precluded from discussing, or even considering, the real merits of the differences existing between the landlords and the tenants, by the violent and criminal conduct of those who assumed to act for the latter, and in their name, and apparently by their approbation; and who had changed the issue to one between sustaining the law, preserving the public peace,

and protecting the rights and lives of unoffending citizens on the one side, and armed resistance against the law, wanton disturbances of the peace, and aggravated trespasses on the rights and lives of individuals, on the other.

Assuming, what I hope time may prove, that these violent proceedings have terminated, and that, hereafter, only constitutional and lawful appeals for redress are to be made, the points really presented for public action, become proper subjects for inquiry and discussion.

The change of the tenures from leasehold to fee simple estates, I have ever understood, and supposed to be the great object of desire on the part of the tenants. The odious character, and evil influences of the leasehold tenures, have certainly formed the great burden of the complaints which have reached me; and I have labored under a false impression, if, at the commencement, the avowed object was not this change. This, it seems to be well understood and conceded, must be reached by contract and compromise between the landlord and tenant, and that no power possessed by the State could so change the existing contracts, while the Constitution of the United States remained in force.[a]

If my present information be correct, that point has been substantially reached, so far as the landlords are concerned. They, I believe, with very few exceptions, avow their readiness to commute the titles, and to enter into negotiations with their respective tenants for that purpose. Some of them have gone so far as to give to the public the terms upon which they will commute, or upon which they will open negotiations for that object; and in many cases, which have come to my knowledge, these terms appear to be such, as in all fairness, require on the part of the tenants, a corresponding advance towards a compromise. I do not say that the precise terms should be accepted; but I think I speak no more than the judgment of the great

[a] U. S. Const. art. 1, § 10, clause 1.

mass of our constituents, when I say that they are propositions which ought to be received as the basis of mutual negotiations.[4]

Assuming the continuance of the leases, another ground of complaint on the part of the tenants is the distress for rent, which it is claimed should be abolished. This the Legislature has the unquestioned power to do prospectively; and I do not suppose the right to do it retrospectively, will be contended for, where the remedy by distress is secured by the covenants in the lease. A change of the law thus affecting a subsisting contract is held, as I believe, by the highest judicial authority in the country, not merely to affect the remedy, but to impair the obligation of the contract itself. Considered therefore, in a prospective light only, I cannot perceive that this change of the law can be seriously detrimental to lessors, and especially of farming lands. Their security for ultimate payment is always to be found in the improvements upon the land. It would doubtless, to a considerable extent, affect the leasing of houses and other tenements in cities and villages, where deterioration rather than improvement to the property is the consequence of the use; but whether the effect would be most to the disadvantage of the landlord, or tenant, is very questionable.

The remedy by distress, especially when applied to farms, is so inseparably connected with the leasehold tenures, as to partake of their unpopularity; and it may be wise, in reference to this description of property, to abolish it prospectively, as it may the tenures themselves as applicable to agricultural lands. This mode of collecting the rent is said to be too summary for the safety of the farmer; while, on the other hand, it is alleged that, although summary, it is the least expensive process for the collection of an admitted and liquidated debt. It is

[4] See *post*, p. 328, for the report of a select committee of the Assembly on the anti-rent trouble.

also added that the non-payment of the rent must be a forfeiture of the lease, entitling the landlord to re-enter and repossess himself of the land with the improvements; and if the remedy by distress be taken from him, he will avail himself of this more severe, though more protracted, redress. A sufficient answer to this argument is that, as the improvements upon the land must always be ample security to the landlord for his rent, where farms are leased in this manner, the change of the law cannot injure him; and if a valuable public good can be accomplished by it, and the tenant, who is the other party in immediate interest, desires the change at this risk, the landlord would seem to have no reasonable ground for complaint or opposition.[5]

A still further complaint made by the tenants is that an inequality of taxation exists in favor of the landlords of these leasehold estates, unjust to the people of the whole State, in reference to the collection of a general tax, and particularly unjust to the people of the counties where the estates are situate, in reference to the taxes annually assessed to pay town and county expenses. The ground assumed, if I understand it, is that the rents are, in effect, the interest upon a capital invested by the landlord and secured upon the land, which capital is as proper an object of taxation as money secured by bond and mortgage, or by contract for the sale of lands. In other words, it is assumed that conveying lands by durable leases is a mode of sale, in effect, by which the seller, instead of stipulating that the purchase money shall be paid within a specified time, requires that it shall forever remain invested in and secured upon the land, and that the interest upon the purchase money shall be annually paid to him as rent. If the

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[5] Distress for rent was abolished by chapter 274, passed May 13, which repealed provisions of the Revised Statutes relating to this subject and prescribed the proceeding on re-entry for nonpayment of rent.

This act was sustained in Stocking v. Hunt (1846), 3 Denio, 274; Guild v. Rogers (1850), 8 Barb. 502; Van Rensselaer v. Snyder (1855), 13 N. Y. 299; Conkey v. Hart (1856), 14 N. Y. 22.

same terms of sale were carried into effect by a deed from the seller and a mortgage from the purchaser, the law would tax the capital secured by the mortgage in the hands of the seller, while the land would be taxed as the property of the purchaser. In these cases, the law taxes the lands to the tenants who occupy them; and still it is said the capital secured to the landlord by the lease, and which produces to him his interest under the name of rent, as the mortgage secures to the seller the capital which produces his income under the name of interest, is not reached by the law, and is not taxed at all, although there is no difference in principle, public policy or substantial justice, between the two cases.

There appears to be force and truth in this position. The place and manner of assessing such capital may be matter of more difficulty and more question. The money due upon mortgages, contracts, notes, and the like, is assessed to the holder of the securities, at the place of his residence, and the tax is payable in his town or ward; while the complaint urged in this case implies the opinion that the leases should be assessed, and the tax paid in the town or ward where the lands are situate. This would be the introduction of a new principle in reference to the assessment of personal property of resident citizens; but the expediency of adopting it, and the mode of carrying it out, are matters of detail, appropriately belonging to legislation, in case the tax itself is imposed.

A report from the Comptroller to the House of Assembly, upon this subject, was made on the 16th of April last, in obedience to a call from the Assembly of 1844. In this document the whole subject is discussed with clearness and force. I respectfully refer the Legislature to it, as presenting considerations, upon this point, which appear to me to be sound in principle and practical in detail.[6]

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[6] Chapter 327, passed May 13 — "an act to equalize taxation" — required the assessors in each town or ward "to ascertain the amount of rents reserved in any leases in fee, or for one or more lives, or for a term of years

A suggestion has been frequently made, in connection with the troubles arising from these tenures, the adoption of which I suppose to be within the unquestioned power of the Legislature, although I am not aware that it has been urged by the tenants upon the existing leasehold estates. It is, that a law should be passed, to prohibit, for the future, this form of selling farming lands, by declaring that no lease for such lands, for a longer term than five, or ten years, or some other short period, shall be valid. It is entirely apparent, notwithstanding the very unwarrantable character of the late disturbances upon the leasehold estates, that these tenures are not in accordance with the spirit of our institutions, or with the feelings of that portion of our people in no way interested in the disturbances, or in the relations out of which they have grown. Such is manifestly the settled state of the public mind upon this point, that the multiplication, or material extension of leasehold estates, would be looked upon as a public evil, threatening more widespread and serious disturbances, than those which have, recently, interrupted our internal peace. If, therefore, there be no obstacle in principle, and none presents itself to my mind, may it not be well for the Legislature to put at rest any apprehension of this sort, by the passage of such a law? I should hope for salutary influences from such legislation upon the existing estates. I think it would have a tendency to confirm, in the minds of the landlords, their present inclination to commute the

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exceeding twenty-one years, and chargeable upon lands within such town or ward, which rents shall be assessed to the person or persons entitled to receive the same, as personal estate, which it is hereby declared to be, for the purpose of taxation under this act, at a principal sum, the interest of which at the legal rate per annum shall produce a sum equal to such annual rents; and in case such rents are payable in any other thing except money, the value of such annual rents in money shall be ascertained by the assessors, and the same shall be assessed in the manner aforesaid." The act contained provisions for the enforcement of the taxes.

This act was sustained in Livingston v. Hollenbeck (1847), 4 Barb. 9; Le Couteulx v. Erie County (1849), 7 Barb. 249.

leasehold titles, and would operate strongly upon the tenants, to induce them to accept fair terms of commutation, and discharge themselves, at as early a day as possible, from an objectionable system of tenures thus confined to them.[7]

I am not aware that it will be necessary to call upon you for any further provisions of law, in reference to the suppression of these disturbances, if they should again arise, as it is to be earnestly hoped they will not. The provisions of the two laws passed by the last Legislature, which have been before referred to, the first "to prevent persons appearing disguised and armed," and the second "to enforce the laws and preserve order," have been very effective, when energetically and faithfully resorted to, and appear to me to be sufficient to secure the enforcement of the law and the preservation of order, so far as legislative enactments can do it. There is some complaint that the last named act throws too heavy a burden upon the county, and especially in expense, before the power of the State can be invoked. This is a point upon which the last Legislature deliberated carefully, and yet experience, subsequent to its action, may have furnished satisfactory evidence that there is justice in the complaint. It is a point of the first importance in enforcing the law, as, unless the power of the county shall be faithfully exerted, the authorities of the State cannot interfere; and if the pecuniary burden upon the county is likely to be so great as to discourage effort and embarrass the sheriff in obtaining a sufficient *posse*, the effect might be dangerous. On the other hand, if the resort to the power of the State is made too easy, that will discourage effort in the county, that all the expense may be

7 The Tilden committee reported a bill embodying the Governor's suggestion limiting leases to ten years. The bill was passed by the Assembly, but failed in the Senate. The subject was further considered by the Constitutional Convention of 1846, by which a provision was included in the Constitution, Article 1, section 14, limiting agricultural leases to twelve years. The constitution of 1894 continued this limitation.

transferred to the State. The subject, therefore, is one demanding careful action, and is respectfully presented to your consideration, in case a change of the existing law should be urged.

The expenses upon the county of Delaware have been very heavy, and I am advised that an application will be made to the Legislature for relief. It may be that a distinction can properly be made between the expenses incurred by that county, after the insurrection existed in fact, and before it was declared to exist by proclamation, so as to authorize the interposition of a State military force. It is proper to inform the Legislature that I was absent from the capital at the time of the outbreak and murder, and agents sent by the civil authorities of the county to invoke my action were delayed several days to await my return; after which time considerable further delay was occasioned, to enable them to return and furnish to me evidence of the facts alleged to exist, but without the evidence of which I did not feel authorized to make so responsible a declaration. From these causes twenty days intervened between the insurrectionary assemblage and the proclamation, and during all that time, as I am informed and believe, the sheriff was employing a very large mounted *posse,* and results showed that it was very energetically and efficiently employed. It was the developments consequent upon these exertions, exhibiting the fact that insurrection did exist on the 7th of August, which laid the foundation for proclaiming its existence in conformity to law; but the interposition of the State could not be retrospective, and therefore the expense of preserving the peace, sustaining the law, and apprehending the guilty, during these twenty days, was thrown exclusively upon the county.[8]

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[8] Relief was granted to Delaware county by chapter 65, passed April 14, which amended the act to enforce the laws and preserve order passed in 1845, by including, among other things, a provision directing the reimbursement of the county for expenses incurred in connection with the anti-rent trouble between the 7th of August and the 22d of December, 1845. These expenses were to be paid from the State Treasury.

According to the requirement of the Constitution,[b] a census of the people of the State has been taken, during the last year, in conformity to the provisions of the law of the last session, directing the manner of taking it. The returns have all been made to the office of the Secretary of State, and the report of that officer will, at an early day in your session, place the results before you.

The entire population of the State is shown to be 2,604,495, being an increase, since the census of 1840, taken in obedience to the constitution and laws of the United States, of 183,574, a little more than seven and a half per cent. for the five years. This is a rate of increase much less than has marked the growth of our population, for the previous portions of the present century; and shows that emigration from the State is much greater than to it. The enumeration was taken as of the first day of July. The number of births in the State, during the year ending on that day, was 89,755, and the number of deaths 36,284; thus showing an increase of the births, over the deaths, in a single year, of 53,471. This ratio of increase, for the five years, would have added to our population more than 70,000 souls beyond the present actual number; which simple comparison establishes two important facts, 1st. That the natural increase of the population is healthful and rapid, and 2d, that the emigration from the State is greater by from 10,000 to 15,000 annually than the emigration to it. Another fact appearing upon the face of the census shows the description of this emigration. It is, that the increase of population is confined principally to the cities and large villages, thus proving that the great body of the emigration from the State is from the agricultural districts. The increase of population, for the five years, in the four cities of New York, Brooklyn, Albany, and Buffalo, makes an aggregate of 147,767.

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[b] Const. 1821, art. 1, § 6.

The number of persons liable to do military duty is 228,292, and the number of persons entitled to vote for all officers elective by the people is 539,379.

The statistics of the productions of agriculture and manufactures are very full, and cannot fail to possess great interest. They will receive too careful an examination at your hands, to require the brief reference to them here, which this communication will permit. The improved land in the State averages a trifle more than four and a half acres to each soul, and there is produced from it, of wheat, corn, rye, and buckwheat, bread stuffs proper, according to our classification, a fraction less than thirteen and one-third bushels to each individual of the population; of barley and oats, a fraction less than eleven and one-third bushels; of beans and peas, about three-fourths of a bushel; and of potatoes and turnips, they being the only articles given of the root crops, a fraction more than nine and a half bushels. The milch cows are more than one to three persons, and the butter and cheese, together, average more than forty pounds to each person. The neat cattle are very nearly one to each soul, and the hogs more than one to two persons. The wool and flax produced are a little less than six and a half pounds to a person, and the cloth manufactured, in families and in factories, is more than seventeen yards to each soul.

A population, whose own industry produces this amount annually, of the necessaries and comforts of life, and affords such a surplus for exchange, may truly be said to hold the great elements of its independence and prosperity in its own hands; neither of which can be destroyed, or dangerously impaired, while such a ratio of productive industry is directed by virtuous and patriotic impulses, strengthened by the universal diffusion of education.

The law of the last session directed the Secretary of State to appoint marshals to take a census of the " Indians residing on the several reservations in this State, with such

statistical information as it should be in their power to collect, and as the secretary should prescribe." The returns of these marshals give the means of comparing the condition of these children of the forest, as they are usually termed, with that of the general population of the State, in many of the particulars above enumerated; and the comparison cannot fail to possess a strong interest, as in some respects it will present a melancholy evidence of the reduced state, and now almost literally diminishing population of these once powerful and proud nations. The enumeration embraces what are usually known as the Seneca, Oneida, St. Regis, Onondaga and Cayuga Indians, within the State. The whole number of souls is 3,753, and the number of births, in the year ending on the first day of July last, exceeded the deaths by a single one.

A minute comparison of the statistics returned with the census of the Indians will show that, in improved land and articles of food, their condition bears a creditable comparison with that of the white population. In manufactures, and especially of the necessary clothing, there is an almost total deficiency.

It is hoped that these people will institute these comparisons themselves, as they cannot fail to show them that the lands they possess, if as well worked, are capable of rendering them as comfortable, and as independent of want, as their white neighbors, which should stimulate them to still further and more valuable, and more useful improvements.

The people of the State have, with a unanimity almost unknown in the history of our elections, decided in favor of the proposition to hold a convention "to consider of alterations and amendments to the constitution" of the State. This decision will relieve the present Legislature from a mass of responsible labor, which has consumed much time, for several of the past years. Important propositions to amend that instrument have held prominent

places upon the calendars of business of both Houses for many consecutive sessions, and have given occasion for elaborate investigations and protracted debates. This whole subject has now been referred, by the people themselves, to a convention; and it would be highly improper in me to attempt to press upon your consideration questions thus wisely disposed of, so far as our agency is concerned.[9]

Upon this Legislature, however, is devolved the constitutional duty of re-apportioning the representation in the Legislature, according to the returns of the State census just completed;[c] and as the election to choose delegates to the convention is to be held on the last Tuesday in April next, justice to the people of the counties, the representation of which is to be increased by the change of population, would seem to require that the apportionment should be made in season to permit this election to take place under it. No injustice will be done, by this proceeding, to the counties, the representation of which is to be lessened by the new apportionment, as they will still have, in the convention, that representation to which their population entitles them, while the other class of counties will have no more.

Justice to the whole population equally requires this action at the hands of the Legislature. The same people who have voted upon the question of a convention are to be represented in that body, and they have a right to be equally represented. I will not, however, occupy your time in the discussion of a point, about which I feel sure there can be no diversity of opinion, but will content myself with recommending that this subject occupy your early atten-

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[9] Chapter 94, passed April 22, provided for the election of delegates to the Convention. Each city and county was entitled to elect delegates equal in number to the members of Assembly apportioned to such city or county by the act passed March 30, 1846. The constitution proposed by the convention was approved by the people at the general election in November, 1846.

[c] Const. 1821, art. 1, §§ 6, 7.

tion, so that the law may be passed in time to prepare for the election in April.[10]

The financial condition of the State is a matter, at all times, of the deepest interest, as well to the people themselves, as to their representatives, upon whose action they depend for the security of their credit, the preservation of their faith, and their indemnity from unnecessary and unjust burdens. My general views in relation to the true financial policy for the State, in the present condition of its debts and liabilities, were so fully expressed in my first message to the Legislature, as to supercede the necessity of a repetition of them here. The recommendations were, in substance, that the indebtedness of the State should not be increased; that the revenues of the respective funds should be so strengthened as to render them sufficient to meet current calls, to pay the interest on the debts, and to make annual contributions to a sinking fund, such as would extinguish the principal within a reasonable period; and that, while the redemption of the pledges contained in former laws, authorizing loans of money, should require it, the whole of the revenues, beyond the payment of current and necessary expenses, should be appropriated to the payment of the portions of the debt falling due, rather than to any new expenditures.

In this last recommendation, I was so unfortunate as to differ from the majority of the Legislature to which the communication was made, and a bill was passed to appropriate a specific amount of the canal revenues for a resumption of the work upon the unfinished canals. Various other expenditures were authorized in the same bill. I was unable to give to the measure my approbation, and, as the Constitution directs, the bill was returned to the House in which it originated, with my objections. Those objections the Journals of the last Assembly will exhibit,

[10] A new Assembly apportionment was made by chapter 44, passed March 30. A Senate apportionment was made by chapter 328, passed May 13.

and any other reference to them in this communication is unnecessary. The bill did not pass by the constitutional vote,[d] and, as a necessary consequence, the question between myself and the majority of the Legislature was referred to the decision of our common constituents.

The statement of the canal debt, at the close of the fiscal year, on the thirtieth day of September last, as given to me from the canal department, is as follows:

Erie and Champlain canal, old debt.....	$111,365.54
Erie and Champlain canal, new debt.....	341,474.52
Erie canal enlargement	9,933,000.00
Oswego canal	421,304.00
Cayuga and Seneca canal.....	237,000.00
Chemung canal	648,600.58
Crooked Lake canal	120,000.00
Chenango canal	2,420,000.00
Black River canal	1,544,000.00
Genesee Valley canal	3,794,000.00
Oneida Lake canal	50,000.00
Oneida River improvement	69,276.13
Making the entire canal debt unredeemed, 30th September, 1845.....	$19,690,020.77

Of this amount, the first item, Erie and Champlain canal, old debt, is provided for; the money deposited in the transfer office, and no interest has been paid upon it since it fell due, on the first day of July last. Yet it is to be paid, is due on presentment, and is therefore a liability against the means of this year. The amount is. $111,365.54

[d] Const. 1821, art. 1, § 12.

Of Chenango canal stocks, there became payable on the first day of the present month	$2,362,535.66	
		$2,473,901.20
Leaving a balance of debt not yet due of		$17,216,119.57
The whole of the Oswego canal stocks become payable on the first day of July next, and the amount is	$421,304.00	
Of the Cayuga & Seneca canal stocks there become payable on the first day of July next, the sum of	150,000.00	
		571,304.00
If these liabilities of the present year be met by payment, there will remain a balance of the canal debt unredeemed, of		$16,644,815.57

The Commissioners of the Canal Fund, during the last fiscal year, and since its close, have pursued the policy of paying these stocks at the day, and have, as means were at command, and opportunities were afforded, redeemed such of the Chenango stocks as were presented. They had given seasonable notice to the holders of the stocks, that interest would not be paid after the 31st of December last, the stocks having been made payable "after the year 1845," and various parcels were presented, and large amounts redeemed, before the first day of the present month, which was the day of payment. On the second day

of the present month, about $1,798,000 of the Chenango stocks had been paid off and cancelled, and about $672,000 was on deposit to the credit of the Commissioners, in the Manhattan Bank in the city of New York, ready to meet the payment of the balance of these stocks, as they should come in.

The unusually large amount of the canal tolls, during the latter part of the last season of navigation, has enabled the commissioners to place in Bank, at the proper point, all the money necessary to pay off the whole of these Chenango stocks, and thus to accomplish what it had scarcely been hoped could be accomplished, without means other than those the Canal Fund could supply. The annual report of the commissioners of that fund, to be immediately laid before you, will give more at large the present condition of the fund, its revenues and its debt.

It will be seen from the same report that the commissioners confidently expect to be able to meet, at the day, the Oswego and Cayuga and Seneca stocks, payable on the first of July next, without any assistance beyond the means in hand, and the tolls of the next season, which may be received in time for that purpose.

If these anticipations shall be realized, we shall have effectually changed our policy in reference to the canal debt. The means of the first two years, after the arrest of the expenditures, were entirely consumed in paying off temporary loans, arrearages and damages to contractors, damages done to lands, and the like claims, which had accumulated during the progress of the works, or were occasioned by their suspension; and in replacing the moneys theretofore accumulated to pay off the old Erie and Champlain canal debt, which had been loaned to banks that were unable to pay; so that the permanent stock debt was increased rather than diminished during that period. Indeed the last year made the first real reduction of this

debt, by the payment of more than a million and a third of the old stock, reducing it to the small sum before given. This balance, and the Chenango, Oswego and Cayuga and Seneca stocks, falling upon this year, amount to the large sum of $3,045,205.20. If these payments shall be made within the present fiscal year, an amount of redemptions equal to $4,314,090.01 will have been made within the two years; the canal stock debt will have been actually diminished $4,069,090.01; and the amount of annual interest upon it will have been lessened $206,396.58. Results like these will rapidly relieve the canal revenues from the consuming demand for interest, which has so long nearly absorbed their whole net proceeds.

The act of 1842, "to provide for paying the debt and preserving the credit of the State" requires a statement from the Canal Department of the revenues of all the State canals, derived from sources annual in their nature, and a like statement of all the expenditures upon those works, and of all charges caused by or growing out of them, including the sum of $200,000, required by a law of 1841, to be annually paid to the general treasury, to be made at the close of each fiscal year.

That statement for the year ending on the thirtieth day of September last, shows an aggregate amount of revenue of.....	$2,375,232.48
And charges and expenses to the amount of	1,918,140.55
Leaving a surplus of revenue over expenses, for the fiscal year, of.....	$457,091.93

In order to institute the sinking fund, required to be established by the act of 1842, it became necessary to ascertain the amount of one third of the annual interest upon

the canal debt existing at the time of the passage of that act, and authorized by it. That was done, at the Canal Department, after the amount of debt to be contracted under the act had become certain; and the sum arrived at was $375,909.38. This then became the fixed sum, which, at the least, in the language of the law, was to be contributed, from the surplus canal revenues, to this sinking fund, at the close of each fiscal year, commencing with the 30th of September, 1842, and continuing until means should be accumulated to pay the whole debt. The close of the fiscal year, ending on the 30th of September last, should have made the fourth contribution of this amount to the sinking fund; and, had they been fully made, there would have been added to the capital of the fund, from this source, $1,503,637.52; whereas the actual contributions have been as follows:

30th September, 1842	$68,504.61
30th September, 1843	255,762.09
30th September, 1844	571,277.51
30th September, 1845	457,091.93
Making the amount actually contributed from the surplus revenues, for the four years	$1,352,636.14

The amounts thus contributed are the whole amounts of the surplus, over and above the expenditures, for each of the years. The surplus for 1842, as will be seen, was very small, and fell far short of the required contribution; and that for 1843 was more than $120,000 short, while those of the two last years considerably exceed the third of the annual interest, as ascertained under the law. Yet the aggregate of annual contributions is less, by $151,001.38, than it should have been to make good the fund, according to the contemplation of the law.

There is no express provision in the law establishing this sinking fund, which requires that a deficiency in the canal revenues to make the contribution, for a given year, shall be supplied from the surplus of a subsequent year, although the nature and objects of the fund require that construction; but the act, chapter 314 of the Laws of 1844, supplies that deficiency, if it be one, by making this requirement in terms. This last act directs the establishment of another sinking fund, to meet a debt authorized by it; but the canal revenues have, as yet, furnished no surplus applicable to that object, as the statements before made show that the calls of this fund require more than the entire surplus hitherto.

My annual message to the last Legislature was prepared under a misapprehension upon this subject. Not adverting to the fact that the deficiencies of former years, in the contributions to this fund, were to be supplied from the subsequent revenues, I assumed that those of the last year had furnished a surplus beyond the demands of this sinking fund upon them. That misapprehension was fully corrected in my message to the Assembly, returning the bill "concerning the canals," with objections; and to the correction there made I respectfully refer, in case the explanation should become material.

The revenues of all the canals, for the last fiscal year, have exceeded those of the year 1844 by the sum of $25,984.38; but the expenses are above those of that year by $140,169.96, so that the surplus of revenue over the expenditures is $114,185.58 less than the same surplus of the previous year. The canal tolls for the year ending on the 30th of September last were $12,305.56 less than for the previous fiscal year, and the rents of surplus water were $654.13 less; but the interest on the current revenue was $38,944.07 more than for the previous year, thus over-

balancing the deficiencies in the other two items, and giving the excess of aggregate revenue above stated. The excess of expenditures for the last year has been principally upon the repairs, under the direction of the superintendents of repairs, and the improvements, under the immediate direction of the Canal Commissioners; the former item having been increased $81,656.32, and the latter $40,351.43. The annual report of the Canal Commissioners will, I presume, exhibit these expenditures and the causes for them, in a satisfactory manner.

The business of the fall has shown that the principal canals must have been in a good condition for navigation, as the amount of tonnage transported has been much greater than in any former equal period, and the regularity and facility with which unusually heavy laden boats made their passage is the best evidence that few obstructions were encountered. The receipts of tolls for the last two months of the navigable season, were unprecedentedly large, and have materially aided at an opportune moment, to place means in the hands of the Commissioners of the Canal Fund to redeem the large amount of stocks which fell due on the first day of the present month. The increased demand and improving price of wheat and flour have contributed principally towards this press of business on the canals, and the consequence has doubtless been to send forward to the market, during the fall, a much larger portion of the last crop, than would otherwise have been brought out before the next season. The tolls of the fall have thus been greatly increased, while those of the spring will be diminished to the extent that its business has been anticipated by the change in the fall market. It does not necessarily follow, therefore, that the tolls of the fiscal year ending on the 30th of September, 1846, will be unusually large, because that portion of them already received has been so.

The tolls upon each of the canals of the State, for the last season of navigation, compared with those of the season of 1844, are as follows:

	1845.	1844.
Erie canal	$2,361,810.75	$2,190,147.34
Champlain canal	119,432.25	116,739.32
Oswego canal	58,448.60	56,164.93
Cayuga and Seneca canal	32,486.66	24,618.17
Chemung canal	21,517.71	14,385.13
Crooked Lake canal	1,943.86	1,497.89
Chenango canal	26,567.34	22,177.96
Genesee Valley canal	23,144.35	19,641.20
Oneida Lake canal	643.16	621.45
Oneida River improvement	459.10	381.13
Total	$2,646,453.78	$2,446,374.52

The statements from the Canal Department, from which the foregoing results in relation to the Canal Fund and its revenues are deduced, are made in conformity with the express provisions of the act of 1842, which requires that, as a part of the annual expenditures from these revenues, shall be given the $200,000, directed by the act of 25th of May, 1841, to be paid yearly to the General Fund. It will be seen hereafter that this sum was not, for the last fiscal year, paid to the General Fund, but was applied by the Commissioners of the Canal Fund to the redemption of canal stocks falling due, and for the redemption of which sufficient means, without this portion of those revenues, were not provided. The reimbursement of this $200,000 to the General Fund, when there shall be no paramount claims upon the canal revenues to prevent it, will leave the canal accounts as they are above presented, and the only

effect will have been that the Canal Fund will have deferred a debt to the general treasury rather than to the public creditor.[11]

The condition of the General Fund is very different from that of the Canal Fund just presented. Its debt is large, entirely beyond the power of its revenues, and is annually augmenting. Its revenues, now greatly unequal to the current charges upon the fund, separate from any payment upon the principal of the debt, are to be materially diminished, during the present year, unless the Legislature interpose, and provide new sources of income.

The debt charged upon the fund was, at the close of the last fiscal year.....	$5,889,549.24
This debt, at the close of the fiscal year 1844, was	5,634,507.68
Showing an increase, within the year ending 30th September last, of.....	$255,041.56

A statement of the liabilities of this fund for the year, and of its means to meet them, shows a deficiency of those means, on the 30th of September last, after applying the whole balance of money then remaining in the Treasury, of $740,151.78. That amount has been borrowed from, and is due to the other public funds.

The productive capital of this fund is literally nothing. Its richest source of revenue, for the last year, has been the mill tax, the whole of which, by a provision in the financial act of 1842, was appropriated to this fund, the

[11] Chapter 326, passed May 13, which by its title was declared to be supplemental to the act to preserve the credit of the State, (1842, chap. 114) authorized the commissioners of the canal fund to borrow on state stock $300,000 to be used in paying land damages, amounts due contractors resulting from an abandonment of contracts, and for engineering and other incidental purposes.

canal revenues having reached the point for the year 1844, when the half of the tax appropriated to that fund was to cease, unless already assessed for another year, in which case the whole tax for such year was to be paid to the General Fund, and after that time the half was to be no longer levied. That contingency happened during the last fiscal year, and therefore the General Fund received the whole tax, but, for the future, only the one-half of the mill tax imposed by that law is to be collected. The remaining principal source of revenue is the $200,000 per annum, directed by the "Act to regulate the accounts between certain funds belonging to this State" to be paid from the Canal Fund for the use of the General Fund. This amount has not been paid for the last fiscal year, for the reason assigned, when speaking of the canal revenues; which has increased to that extent, the deficiency in the revenues of the General Fund, for that year.

I can add nothing to the recommendations urged in my former annual message, that provisions be made to strengthen the revenues of this fund, and to arrest the rapid increase of its debt. The ordinary expenses of the government are now annually met by loans; and money is, in effect, if not in fact, borrowed in each subsequent year to pay the interest upon the debt which the necessities of the previous year accumulated. In my judgment, neither the interest, nor the will, of our constituents is observed in the pursuit of a policy so ruinous.

In addition to the amount of debt actually charged upon this fund, it is contingently liable to the amount of $1,713,000.00, for loans of the credit of the State to canal and railroad companies, which yet continue to pay the interest, and it is hoped will extinguish the principal also of the loans, as they shall become payable, and save the State entirely harmless. A large portion of the loan to the Delaware and Hudson Canal Company, which was made upon

a credit of twenty years, is to fall due on the first day of January, 1848. This stock, by its terms, is payable "at the pleasure of the State at any time after the year 1847," and as it is the settled policy of the State not to defer, beyond the day, the redemption of stocks issued for its own benefit, it is presumed its pleasure will be that the stocks it has loaned shall be redeemed by the same rule, payment at the day. The stocks loaned to this company were issued by the comptroller, and the original certificates signed by him; but they are transferable at the office of the company, and the new certificates are signed by its treasurer, and countersigned by the officer appointed in the city of New York, to transfer other stocks of the State. The transfer books are kept at the office of the company; the lists of stockholders are only to be found there, and there the payments of interest are to be made.

It is important that a notice should be seasonably given to the holders of these stocks, that they will be paid on the first day of January, 1848, and that such is the pleasure of the State. It is not believed that any officer of the State is now authorized to give this notice, and, without the lists of the holders of the stock, no officer has it in his power to give it. I recommend that provision be made by law to meet this case, and also to reach all the stocks loaned by the State to canal and railroad companies.[12]

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12 The Legislature does not seem to have adopted the Governor's suggestion as to notice of the payment of the stock. The constitutional convention considered this subject in connection with the limitation of state debts, and the granting of aid to private corporations, and included in the Constitution the following provision, article 7, section 4:

"The claims of the State against any incorporated company to pay the interest and redeem the principal of the stock of the state, loaned or advanced to such company, shall be fairly enforced, and not released or compromised; and the moneys arising from such claims shall be set apart and applied as a part of the sinking fund provided in the second section of this article. But the time limited for the fulfillment of any condition of any release or compromise heretofore made or provided for, may be extended by law."

The productive capital of the Common School Fund, at the close of the fiscal year, was	$2,090,632.41
At the close of 1844 that capital was	1,992,916.35
Showing an increase, within the last year, of	$97,716.06

The unproductive part of the capital of the fund is about 350,000 acres of unsold land, situate in the northern part of the State, and valued at $175,000.

The receipts into the Treasury, during the year, for revenue from this capital, were.	$113,458.87
Add the appropriation of revenue from the U. S. Deposit Fund	165,000.00
And the entire revenues of the fund for the year, will be	$278,458.87
At the close of the fiscal year ending 30th September, 1844, there was remaining in the Treasury a balance of the revenues of this fund, of	89,019.46
Making the whole means of the year	$367,478.33
The entire payments from these means during the same year, were	280,649.37
Leaving in the Treasury, on the 30th September last, a balance of revenue of	$86,828.96

The distribution to be made annually to the common schools from the revenues of this fund, is $275,000; and this is upon the condition that the counties raise by tax

a like sum for the like distribution, so that the sum of $550,000, is in fact distributed to the common schools from the operation of the laws regulating this fund. To this amount the local funds possessed by various towns in the State, growing mostly out of lands originally reserved for the use of schools, have added $20,000. Certain towns have, by the vote of their inhabitants, raised by tax upon themselves, $16,000 more; and there has been raised in the cities, under various special laws, the further sum of $200,000; so that the whole expenditure for the year, from these sources upon the common schools, and the school district libraries, has been $786,000.

Of this sum the amount paid for teachers' wages, has been	$629,856.94
And the amount contributed on rate bills to pay teachers' wages, has been	458,127.78
Showing an aggregate paid, in the State, to teachers, of	$1,087,984.72

The school district libraries contain 1,145,250 volumes; 106,854 volumes having been added during the year, covered by the last reports. Towards these libraries there was paid of the public money, during the last year, $95,-159.25. Of the money raised in the cities, about $80,000 has been expended in the erection of school houses.

The whole number of organized school districts in the State, is 11,018; and from 10,812 of these, the Superintendent of Common Schools has received reports in conformity to the law. These reports give the number of children in the districts, between the ages of five and sixteen years, at 690,914, and the whole number of children instructed in the common schools during the year, at 736,045. They show that, of this last number, 4,298 children have been taught during the whole year; 48,875 for ten months; 94,893 for

eight months; 189,885 for six months; 337,000 for four months; 534,261 for two months, and upwards; and 201,784 for less than two months.

Such are some of the statistics laid before me, by the Superintendent of Common Schools, touching this interesting subject. The annual report of that officer will soon be presented to the Legislature and will supersede the necessity of my giving more of these facts, or indulging in comments on those presented; and I have, upon a former occasion, so fully expressed my views upon the paramount importance of our common school system, its great objects, and the results which the administrators of it ought to strive to accomplish, that a repetition of those views is unnecessary.

By an act passed on the 7th of May, 1844, the Legislature appropriated money for the establishment of a "Normal School, for the instruction and practice of teachers of common schools in the science of education and in the art of teaching." The law places the school under the direction of the Superintendent of Common Schools and the Regents of the University, who are to appoint an executive committee of five members, of whom the Superintendent shall be one, to take the immediate charge, and superintend the management and government of the school, under the regulations, and to report annually to the Superintendent and Regents.

The city of Albany very generously tendered the use of a suitable building, free of rent, and the school was organized, and commenced the business of instruction, on the 18th day of December, 1844. Twenty-nine pupils presented themselves on the first day, and the number increased to ninety-eight during a term of twelve weeks. Pupils attended from forty of the counties of the State. The second term commenced on the second Wednesday in April, and continued 20 weeks, and on the first day of the term 170 pupils were present. The whole number attending the school, during the term, was 185, and every county in the

State, except Putnam, sent one or more students. About nine-tenths of the whole had taught school, for a longer or shorter period. At the close of the second term, 34 of the scholars received diplomas, being certificates of their qualifications to teach common schools. The third term commenced on the third Wednesday in October last, and is to continue 21 weeks. At the opening of the school, for this term, 180 pupils were present, and the number has increased to 197, of whom 94 are males and 103 females. Of this number, 176 have been teachers for a longer or shorter period; some for several years. Every county in the State, except Seneca, is represented in the school at the present time.

These results have been experienced during the first year of the existence of this institution, and they have more than realized the most sanguine expectations of the friends of the school. This is an experiment in our State, but certainly connected with a subject — the proper education of common school teachers — which authorizes every reasonable effort, giving a promise of improvement, and even any experiment, which shall hold out that promise. In this particular our common school system has proved to be the most deficient, as every friend of education has seen and felt. The institution of pattern schools for the education of teachers is not new. The system has been in operation in several European countries for a length of time, and in the State of Massachusetts for several years last past; and wherever the experiment has been made, it has been successful.

The executive committee of this school entertain the opinion, that no similar establishment, elsewhere, has started so vigorously, or made so great an advance in a single year; and they believe, in addition to a very successful and fortunate selection of teachers, the causes are to be found in the liberal patronage of the State, and the peculiar organization of the school. The pupils from the counties are selected by the board of supervisors, or in case they

are not to meet in time to supply a vacancy, by the county and town superintendents of common schools. The applications are numerous, presenting a wide field for selection; and the consequence is, that the students appointed are to a great extent those to whom the county superintendent would cheerfully give certificates as teachers, before they receive the benefits of this school. Hence talent and character are secured to build upon, and with capacity and faithfulness on the part of the teachers, and diligent application on the part of the scholars, success can scarcely be doubtful.

No serious difficulties have been encountered in the government of the school, and the executive committee speak of the conduct and bearing, and the untiring industry and application of both teachers and scholars, in the highest terms of praise.

The act chapter 311 of the laws of 1844, appropriated $9,600 to meet the expenses of organizing and commencing the school, of which sum but $3,200 has as yet been drawn from the Treasury. This appropriation was made from the revenues of the Literature Fund, being the amount formerly paid annually to certain selected academies, for the education of common school teachers. The same law, and the act chapter 142 of the laws of 1845, secure an annual appropriation of $10,000 for the period of five years, for the support of the school, also to be paid from the revenues of the Literature Fund, in case those revenues shall be sufficient, and if not, then from the Treasury, to be charged over upon the surplus revenues of the United States Deposit Fund.

The executive committee state, that this appropriation is ample for the support of the school upon the plan adopted. Indeed, it was intended that the fund should be more than sufficient to meet the mere charges of the school, and should offer something towards the expenses of the pupils, as an encouragement for their attendance. Hitherto the regulation has been to select from each county, scholars equal in number to the members of the Assembly, and to

consider these as State pupils, entitled to such a distributive share of the appropriation as the expenses of the school should leave to be thus applied. The number of these scholars at present is 123, and 75 cents per week is paid to each, towards board. During the two former terms, when the school was smaller, these payments were larger per scholar. There are 74 scholars, denominated volunteer pupils, being those who are not selected from the counties in the manner prescribed, but come in upon application and examination, and pay all their expenses, having their tuition and the use of the class books free of expense.

The committee have now concluded that, by fitting up an additional room, they can accommodate 256 scholars, twice the number of the members of the Assembly, and that, after the present term, all shall be State pupils selected from the counties, upon the ratio of representation in the Assembly, and equally entitled to a distributive share of the public money; and that, to bring all to the school upon terms of the nearest possible equality, they will, hereafter, make the distribution with an equitable reference to the distance traveled, and the expense incurred by each pupil in reaching the school. The distributive share to each scholar will probably be less than actual traveling expenses, so that this rule will tend to bring the school, in point of expense, equally near to all. These regulations will, I think, be a great improvement upon those now in force.

I forbear going further into detail in reference to this institution, as the annual report of the executive committee will soon be laid before you, and will give these and all other material facts connected with the school, much more fully than they can be presented in this communication. Among other information of interest, that report will be accompanied by a full statement of the course of instruction in the school, exhibiting to the easy comprehension of all, the great leading design and object, that of making competent and useful teachers of common schools, and the mode adopted to accomplish it.

The report of the committee, will also exhibit the organization of the experimental school connected with the institution, and the objects intended to be secured by it; and also the great benefits anticipated from the labors of the graduates and pupils of the Normal School in the teachers' institutes, formed, and now extensively forming in the several counties of the State. These portions of the report will possess a deep interest, and will present this school, and its anticipated benefits, in very striking points of light.

The five years, for which the laws have already provided, will give to this interesting experiment a fair trial, and the intrinsic importance of the subject, and the present promises of success, appear to me to make it the dictate of wisdom to permit the trial to be fully made.

The capital of the Literature Fund is the same as at the close of the year 1844, and amounts to $268,990.57.

The payments into the Treasury on account of its revenue, during the last fiscal year, have amounted to	$27,586.88
Add the appropriation from the U. S. Deposit Fund	28,000.00
And it will make the revenue, for the year ending 30th Sept. last	$55,586.88
There was a balance of the revenue of this fund in the Treasury, at the close of the fiscal year 1844, of	19,624.38
Making an aggregate of means for the year 1845, of	$75,211.26
The payments for account of revenue for the same year, were	55,876.38
Leaving a balance of revenue in the Treasury, 30th Sept. 1845, of	$19,334.88

The academies of the State are under the superintending charge of the Regents of the University, and their annual report to the Legislature will exhibit the expenditures from the fund, and present the condition of those institutions.

The amount of the deposit of the United States with this State denominated in the accounts, "The United States Deposit Fund," is		$4,014,520.71
Of this sum there is loaned to the counties	$3,641,520.98	
Invested in State stocks	1,100.00	
Due from the General Fund	371,899.73	
		4,014,520.71

The receipts into the Treasury of revenue from this fund, during the last year, have amounted to	$280,272.55
The payments of revenue for account of the fund, to meet the current annual charges, have been	263,848.32
Leaving a balance of	$16,424.23

On the 30th day of September, 1844, upon the close of the accounts of that fiscal year, a balance was due to the Treasury, from this fund, for advances to meet the demands upon it, over and above the receipts of its revenue, of	$25,947.87
Deduct the above balance of its revenues remaining in the Treasury, upon the close of the accounts of the last fiscal year	16,424.23

And there will remain a balance due to the Treasury, from the revenues of this fund, on the 30th day of September last, of	$9,523.64

The law requires that the capital of this fund should remain invested, and that the interest only should be expended to meet the appropriations made from it.

The whole amount of the notes of insolvent banks redeemed through the Safety Fund, since its institution in the year 1829, is		$1,586,780.00
In addition to these redemptions of notes, debts due from these institutions, and made by law chargeable upon the fund, have been paid to the amount of		373,722.08
		$1,960,502.08
These heavy payments have not only exhausted the capital of the fund, but have rendered necessary an anticipation of the contributions to it, by the emission of stock in pursuance of the act, chapter 114, of the laws of 1845, to the amount, up to the 30th day of September last, of		$335,801.69
The fund possesses means to meet this debt as follows:		
Capital invested	$20,000.00	
Balance of money in the Treasury	38,853.05	
		58,853.05
Thus leaving, on the 30th of September last, a balance of debt, charged upon the future contributions to the fund, of		$276,948.64

The Mariner's Fund is constituted of moneys collected from the masters of vessels, and from seamen and passengers, to defray the expenses of the marine hospital at New York, the quarantine establishment at that place, and other like expenses at that port. These moneys are collected and disbursed by officers appointed for that purpose, whose accounts are rendered to the Comptroller, and audited and settled at his office, and the balance only of moneys collected over and above the current expenses, are paid into the Treasury, and constitute the fund as here presented.

The capital of this fund, at the present time, is as follows:

Money invested in State 5 per cent stock....	$22,000.00
Mortgage from the Seamen's Friend Society, without interest	10,000.00
Money in the Treasury under protest	31,621.75
Balance of money in the Treasury, 30th September, 1845	25,895.72
Making a total of	$89,517.47

A question has been raised as to the constitutionality of the laws of the State imposing these assessments upon the masters and seamen of vessels and their passengers, and the money above mentioned, as being in the Treasury under protest, was paid under a protest against the right of the officers of the State to demand and collect it. A suit was instituted by those officers, in the courts of the State, to recover money due under these laws. That suit is now before the Supreme Court of the United States, and it is confidently expected will be decided during the present term of that court. The only question raised, so far as I am informed, is the constitutionality of the laws of the State imposing the taxes. I cannot permit myself to entertain a doubt as to the decision of this question.

After this point shall have been settled beyond further controversy, there are reasons to believe that the attention of the Legislature should be turned to the subject of the expenditures under the health laws, and to the rates of tax imposed especially upon the sailor; and also the practicability of reducing the amount of money collected, and meeting all the necessary expenses of such an execution of those laws as the real interests of our commercial marine demand and require.[13]

Our penitentiary system is extending itself with our increasing population. The erection of the Clinton prison has been commenced, within the last year, the effect of which has been to diminish the number of convicts remaining in the other prisons, at the close of the year. Still the aggregate number of convicts in all the prisons has increased, probably in about the usual ratio.

The number in the Auburn prison, on the 30th of November last, was 683, being 72 less than the number at the close of 1844. This diminution has been caused by the transfer to the Clinton prison of 44 convicts, and to that prison district, for about six months in the year, of all the counties in the fifth Senate district, and permanently of the counties of Herkimer and St. Lawrence, in the fourth Senate district. The report from this prison presents a very favorable account of its condition. Eleven deaths only have taken place among the convicts, for the year, and three of them have resulted from casualties, leaving but eight, a trifle more than one per cent, as the consequence of ordinary sickness. The discipline of the prison is said to be good, and to be successfully maintained, and the earnings of the convicts are shown to have exceeded the total expenditures of the prison by the sum of $9,392.04. The means

[13] The Governor probably referred to Smith v. Turner, 7 How. U. S. 283 (1849), which declared unconstitutional the provision taxing alien passengers for the benefit of the marine hospital as set forth in the New York Revised Statutes, volume 1, page 445, title 4.

of the year have met the expenditures and leave a balance on hand of $7,369.49, larger, by $2,563.37, than the balance of the previous year. The expenses appear to have been reduced about $10,000.00 below those of the preceding year, and about $7,000.00 below the estimate for the last year.

The number of convicts remaining in the Mount Pleasant prison, on the 30th of September last, was 797, less by 66 than the number at the close of the previous year. There were transferred from this to the Clinton prison, during the year, 50 convicts, and, for about half the year, all the counties in the third Senate district, and permanently all the counties in the fourth Senate district, excepting Herkimer and St. Lawrence, were transferred from this to the Clinton prison district, which causes have produced this diminution in the number of convicts.

The prison for females at Mount Pleasant receives the female convicts from the whole State. The number remaining in that prison on the 30th of September last, was 61, being 11 less than at the close of the previous year, and showing that diminution in the number of convicts of this class. The number received during the year was 19; discharged by expiration of sentences 18, by pardons 5, and by deaths 7.

The receipts and expenditures of these two prisons do not show as prosperous a condition, financially, as that exhibited from the Auburn prison. The accounts of the prison for males, and for females, at Mount Pleasant, are kept together, and the aggregate expenses of the two, for the year, are given at $82,798.91, and the receipts from the earnings of convicts, for the same period, at $64,658.31, leaving a deficiency in the receipts of the year, to meet the expenses, of $18,140.60. This balance of expenditure has been paid by drawing from the Treasury $17,800, deposited therein from the former surplus earnings of the prison, and $340.60 from a balance on hand at the close of the previous year. The expenses of the last year have been increased

$18,583.88 over those of 1844, while the earnings have, by a trifle, exceeded the expenses of the previous year. Of this excess of expenditure, over those reported for the last year, some $6,000 to $7,000 are said to have been payments for expenses actually made for the service of 1844, but the bills for which were presented and paid in 1845. This will show that the difference in the expenditures between these two years, as above exhibited, is, to a very considerable extent, rather apparent than real, and that no such change of the amount of actual expenses, as the figures would seem to show, has, in fact, taken place; although the deficiency in the income to meet the expenses of the two prisons is a reality. The annual report of the inspectors will exhibit more accurately and fully the state of the accounts, and the causes for this excess of the expenditures, over the earnings of the convicts.

The prison for the males has been visited, during the year, by a malignant fever, which swept off twelve of the convicts. The whole number of deaths for the year was fifty-one, which presents a ratio of mortality, separate from the deaths caused by the fever, greatly beyond that of the other prisons. This is accounted for in the communication to me, by the fact that a large share of the convicts, received at that prison, are drawn from the cities of New York and Brooklyn; and that many of those, convicted of crime in such large towns, have previously impaired their healths and injured their constitutions by exposure and vicious habits, or have become broken down by prior imprisonment, so that a large proportion pass directly to the hospital, upon entering the prison, and numbers prove to be too extensively diseased for recovery, by the attentions which can there be paid to them. The bad quality and short supply of water for the prison, during the dry season, is believed to be another cause of the increased sickness and mortality in that institution.

All these subjects, together with the discipline of the prison, and its success for the year which has closed, will be presented and discussed in the annual report of the inspectors to the Legislature.[14]

When preparations had been made at the Clinton Prison for the employment of convict labor, orders were given for the removal of convicts from the other prisons, in conformity with which, 50 prisoners from Mount Pleasant, and 44 from Auburn, were removed to that prison. At the same time a very large district was assigned to the new prison, comprising all the counties in the third, fourth and fifth senate districts, with the view of strengthening the laboring force there as rapidly as the opportunity for employment should require. The result was, that 73 convicts were received at that prison, pursuant to sentences, before the close of the fiscal year on the 30th of September last. In this time one convict made his escape, and one died, leaving in the prison, on the 30th of September, 165. That number had been increased on the 1st of December to 187.

The law of 1844, directing the construction of a new prison in the northern counties, made a preparatory appropriation of $30,000. The act, chapter 70 of the laws of 1845, amending the law of 1844, made a further appropriation of $75,000 towards the construction of the prison. Of these two appropriations, amounting to $105,000, there had been drawn from the Treasury, previous to the close of the last fiscal year, the sum of $60,123.57; of which, $57,149.07 had been expended, and a balance of $2,974.30 remained in the hands of the agent. This left undrawn of the appropriations, $44,876.43; but between the 1st of October and the 1st of December, the further sum of $19,558.29 was drawn, leaving in the Treasury on the last named day, $25,318.14.

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14 Chapter 275, passed May 13, appropriated $10,000 to pay debts incurred on account of the Mount Pleasant prison; $10,000 to bring water from the Croton Aqueduct; $4,000 for repairs, and $4,000 for new buildings and completion of walls.

The outer wall of the main prison has been completed, and covered with a substantial slate roof for the length of 290 feet, and one block of cells, 126 in number, constructed within them. This block occupies less than half the length of the outer wall completed and covered, and it is the design of the agent, during the winter, to construct another like block of cells within these outer walls. This work is now in progress, and, if completed by the spring, will finish the one half of the main prison.

The other buildings erected are a substantial foundry, a machine shop, a keeper's hall, and a dwelling house for the agent and clerk, besides the temporary erections necessary to shelter and keep the convicts, and to protect the work.

The agent states, that in quarrying stone for the building, the ore-bed has been sufficiently opened to show that it fully equals any anticipations entertained at the time of its purchase for the State.

The health of the convicts has been remarkably good, notwithstanding their exposed condition, and the character of their employment; but two deaths having taken place up to the 1st of December. Less difficulty has been encountered in the government of the convicts than was apprehended, and although some few escapes have been effected, a prompt recapture has followed, except in a single instance. The agent speaks favorably of the general conduct of the prisoners, and of their cheerful and faithful application to the labor assigned to them.

This officer anticipates a want of means, during the next season, beyond the balance remaining of the former appropriations; but as he has presented to me no estimate, I am compelled to refer you to his annual report for the amount and objects of expenditure. I must believe that his success during the past year will fully meet the expectations of the Legislature, and offer the best assurance which could be

given, that if means be provided, the buildings required for this prison will be early completed.[15]

In reference to all these institutions, the annual reports of their respective managers will be so soon laid before the Legislature, that I feel excused from going into minute details in regard to them.

The report of the Bloomingdale Lunatic Asylum, presents the condition of that institution in a very favorable light. Up to the 6th of December last, the number of patients admitted during the year 1845 had been 130, being 22 per cent beyond the admissions of the whole previous year; 55 per cent beyond those of 1843, and 53 per cent beyond those of 1842. There were 121 patients remaining in the Institution, being 18 more than the number one year previously. There had been discharged during the year 96, of whom 49 had been cured; and the whole number of deaths had been 12. The means for favorable treatment of the patients, and especially for moral treatment, are said to have been materially extended, very much to the advantage of the inmates of the asylum. The expenses for 1845, it is thought, will have been less than for 1844, although the number of patients has been so much increased; and the funds of the institution, including the $10,000 paid annually by the State, are represented as sufficient to meet its expenses, and gradually reduce the debt contracted for the purchase of the farm and the erection of the buildings. The accounts of the Asylum are kept for the calendar year, and will be presented to the Legislature in the annual report of the governors of the New York hospital, of which this institution is a branch.

The State Lunatic Asylum, at Utica, continues to dispense its benefits to the extent of its present capacity. The

[15] Chapter 324, passed May 13, appropriated $50,000, for maintenance at the Clinton Prison, and for prosecuting work already authorized, and contained other details relating to prison administration.

finished building is arranged for the accommodation of about 250 patients. At the close of its fiscal year ending on the 30th of November, 1844, the number of patients in the institution was 260; which on the 30th of November last, was increased 285. There were admitted, during the year, 293 patients, who with those remaining in the asylum at the commencement of the year, made an aggregate of 553 cases under treatment within the last year. Of these, there were discharged recovered 135; improved 78; unimproved 34; died 21—in all, 268. This statement exhibits a condition of physical health among the patients certainly remarkable, and the report adds, that not a single death, and scarcely a case of sickness, had occurred for more than two months previous to its date, on the 1st of December last. The ratio of cures, in the two institutions, will be seen to preserve a singular equality, and to be a fraction more than 50 per cent—a degree of success in the restoration to reason of the insane mind, offering every encouragement to the friends of patients to seek the aid of these asylums, and the richest compensation to the public for the liberal provision made for these most severely afflicted fellow-beings.

Additional buildings were provided for, at this asylum, by a law of 1844, and the sum of $60,000.00 was appropriated for their erection. Two wings, each 240 by 38 feet and three stories high, and two back buildings, each 130 by 25 feet and two stories high, have been enclosed and the rooms are now in a course of completion. The buildings are all of brick, and are said to be well built and well arranged; and when completed are calculated to furnish accommodations for 300 additional patients. This will be, when thus finished, the largest institution of the kind in this country, and, in the opinion of the principal, it will be second to none in the excellence of its arrangements and facilities for the comfort and cure of this class of patients.

At the close of the last fiscal year, the accounts of the asylum for general support, stood as follows:

RECEIPTS.

From the State Treasury, for salaries of officers	$3,875.00
From counties and towns, for the support of patients	22,547.13
From pay patients	11,759.75
From miscellaneous sources	53.81
	$38,235.69

PAYMENTS.

For salaries of officers	$3,875.00	
For furniture	1,616.65	
For additions, alterations and repairs	1,403.52	
For the improvement of grounds	43.07	
For general support, embracing all objects but those above	23,010.21	
		29,948.45
Leaving a balance in the Treasury, applicable to general support, of		$8,287.24

About $5,500.00 of this balance, it is expected, will be required to meet bills due at the close of the year, but not presented and paid at the time of the report. This will leave $2,787.24 to meet current expenses up to the 1st of February, when the semi-annual collection of bills is made.

Of the appropriation of $60,000, made by the act of 7th of May, 1844, for the erection of the new buildings, $50,085.52 had been expended up to the 1st of December last,

about $6,000 of which was expended before the commencement of the last fiscal year. A difficulty was encountered in preparing the foundation for one of the new wings, occasioning an expense of several thousand dollars not anticipated.

The last year has proved the inadequacy of the present supply of water for the asylum, and the badness of quality of that obtained; and the managers consider it indispensable that an additional supply and better quality should be provided. To meet this expense, and the expenses of finishing, warming and furnishing the new buildings, they estimate that they shall require about $40,000, beyond the balance of the present appropriation.

Their annual report will give to the Legislature all the information necessary to enable its members to form safe opinions as to the further legislation required to put this important institution into healthful and successful operation, upon the plan now so nearly completed. I recommend that the necessary appropriations be made to complete and furnish the new buildings, and to provide for the whole a plentiful supply of good water.[16]

The New York Institution for the Blind is another public charity, alike worthy of the patronage of the State, and liberally sustained by it. The report of the superintendent presents the institution in a state of high prosperity, the number of its pupils increasing, and the system of education steadily advancing. One year ago this institution was embarrassed by a considerable debt, but the liberality of the last Legislature, added to that of individuals, has enabled it, within the year, to extinguish the debt and meet its current expenses. The superintendent is of the opinion that, for the future, the income of the institution from

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16 Chapter 98, passed April 22, appropriated $17,000 for the completion of buildings at the State Lunatic Asylum, $5,000 for furniture, fixtures, and furnaces, and $3,000 for an ice house, other out buildings and a fence. The act also authorized the use of surplus water from the Chenango canal for asylum purposes.

ordinary sources will be nearly, if not entirely, sufficient to meet its regular expenditures. It is most gratifying to know that an institution, founded for so noble a charity, is relieved from the consuming exactions of debt, and is left at liberty to concentrate its whole means, and the entire energies of its managers, upon the beneficent work of shedding a flood of mental light around the physical darkness which envelopes its unfortunate inmates.

The annual report of the managers, to be laid before you, in the course of the present month, will communicate full information of the transactions of the year, and supersede the necessity of further remark upon this subject.

The Institution for the Deaf and Dumb, in the same city, is another monument of the long continued and well directed munificence of the State, to illuminate by education the minds of those who, from the deprivation of the sense of hearing, and of the use of organs of speech, were long supposed to be beyond the reach of mental improvement. The report of the principal presents this institution in a flourishing condition. Various improvements of the buildings and grounds have been made, during the year 1845; and the number of pupils has increased to 200. Of these 113 are males and 87 females; 160 are State pupils, 13 are supported by the supervisors of the county of New York, 3 by the State of New Jersey, 14 by their friends, and the remaining 10 by the institution. In addition to mental instruction, some portions of the time of the pupils, for each day, are expended in learning some useful trade or employment, which may enable them to gain a livelihood by their own exertions, and at the same time impart needful exercise.

The annual report of the directors, to the Legislature, will place these and other interesting facts before you in a full and satisfactory manner, and will give you the condition of the fiscal affairs of the institution for the past year, the accounts of which could not be made up until

after the 31st of December, as the fiscal is the calendar year. The provision made by the last Legislature for the support of this institution, for the term of five years, supersedes any call for aid at the present time.

I respectfully refer the Legislature to the annual report of the Adjutant General, this day transmitted, for various important suggestions in relation to the militia laws, and especially on the subject of securing a more perfect enrolment of the men liable to perform military duty. The present system of enrolments does not include those who though exempt from annual militia service, are not exempt in cases of insurrection and invasion. These constitute a portion of the military force of the State, as much as if they had no temporary exemptions, and should, as it appears to me, be enrolled. It is believed this is done in some, or all of the other States, and it will be seen that the interests of this State are supposed to suffer, in an important particular, by our omission to enroll them.

The suggestions of this report upon several other subjects are considered of primary importance, and the attention of the Legislature is earnestly invited to them.[17]

The transactions of the State Agricultural Society, for the year 1845, will doubtless be laid before you, in the accustomed form, at an early day. The annual fair of the Society was held at Utica, on the 16th, 17th and 18th days of September last, and the exhibition was a proud one for the agriculture of the State. My information induces the belief that it was equal to any one of the exhibitions which

[17] A general militia law, was passed at this session, chapter 270 (May 13) providing for the enrolment of the militia, and to encourage the formation of uniform companies. The whole subject of militia organization, regulation and administration was provided for, and all inconsistent laws were repealed. The legislature, also at this session, adopted concurrent resolutions urging Congress to enact legislation for organizing and disciplining the militia of the United States. The preamble pointed out that the federal statutes on this subject had been in existence more than fifty years, and were defective and inadequate for present conditions.

have preceded it, and that the deep and pervading interest of our population, agricultural, manufacturing, and mechanical, in these comparisons of their various productions, and examinations of the improvements made in each great branch of industry, was as fully manifested, as upon any former occasion.

The last Legislature extended the appropriation in aid of this society, for the term of two years from May next, so that I am not aware that any legislation is desired upon this subject, during the present session. The transactions of the Society, to which I have alluded will be the most appropriate recommendation of this great and vital interest to the renewed attention of our constituents.[18]

Nothing has transpired during the past year to interrupt the peaceful and amicable relations existing between this State and the other States of the Union; and our internal condition, with the exception before brought to your notice, has been peaceful and prosperous in an unusual degree. The public health has been good in all parts of the State, the seasons propitious and fruitful, and the prices of the products of labor, and especially of most of our agricultural productions, have experienced an improvement over those of the last few years, most encouraging to industry in all its branches. As a whole, it is believed the year 1845 may be justly numbered among the most prosperous years in the history of the State.

We learn from the late message of the President of the United States, that the relations of the Federal Government, with all the powers of the earth, are also peaceful. Considerable sensation has been experienced, at various periods during the past year, from the prospect of an interruption of those relations with the Republic of Mexico;

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[18] The American Agricultural Association was incorporated by chapter 319, passed May 13, "for the purpose of promoting the improvement of agriculture and its kindred arts, by introducing into their practical operation, scientific knowledge."

but as that government has concluded to re-establish the diplomatic intercourse between the two countries, which had been suspended by its action, and as the measure which induced that suspension has progressed so far as to leave no doubt of its final consummation, the reasonable presumption is that all differences will be amicably adjusted, and the peace of the two nations continue unbroken.

As a declaration of the policy of the present administration of the Federal Government, the message of the President appears to me to justify the confidence entertained by the country in the publicly avowed principles of the man, and to realize the expectations naturally excited by his elevation to the high trust he holds. The re-establishment of the independent treasury was confidently anticipated as a result of his election, and that great measure could not have been more distinctly, or strongly, recommended to Congress, than it is in this message. The principles put forth as those which should govern an adjustment of the laws for the collection of our revenue from the customs, are also those the country had a right to expect from his public declarations upon that subject. They appear to me to be substantially the principles upon which alone a tariff of duties upon imports can be adjusted, which will have a promise of permanency, or which will give reasonable satisfaction to the different sections of our widely extended country, and to all the various interests to be affected.

The topic in the message of most engrossing interest and of paramount importance, is the frank and clear statement of the condition of the negotiations between us and Great Britain, touching the claims of the two countries to the territory of Oregon. It is not, of course, my design, as it is not my province, to discuss this great question; but I feel it to be due to the subject and the occasion to say, that I am satisfied the proposition made by the President to the British Minister, as a compromise, to establish the

forty-ninth degree of latitude as the line of territory between the two powers, and to make free to Great Britain such ports as she may select on the coast of Vancouver's island, south of that latitude, was the most liberal concession, which the judgment of the people of this State, or of this country, would have justified.

It was due to the amicable manner in which this question has been treated, by the respective parties, ever since the close of the late war, between them, that the negotiation should be conducted in a frank and conciliatory spirit, and that our disposition for continued peace should be manifested by a proposition of compromise, extending to the extreme limit of reasonable concession. The offer to protract the line of boundary already settled between the two powers, upon the same degree of latitude, from the Rocky Mountains to the Pacific Coast, would seem to be that proposition, even without peculiar and valuable commercial facilities within the boundary so proposed. Such a proposition, with these facilities added, has been promptly declined by the British Minister, and hence the inference has been drawn that the prospect of an amicable adjustment of this question is at an end. This I will not believe. I cannot convince myself that further consideration will not bring the British Government to see, in this offer of the President, not only the tender of a boundary, which she cannot call unjust, but a spirit of liberal and generous concession, such as should characterize negotiations between enlightened commercial states, especially upon questions of mere interest.

Much less can I entertain the opinion that Great Britain will attempt, by war, to force us to surrender, upon the coast of the Pacific a portion of the front, which covers interior territory held by us in conformity with solemn treaty stipulations with herself. If, however, she shall choose this alternative, rather than an amicable settlement upon terms so decidedly favorable to herself, the world

will be prepared to place a proper estimate upon her desire for a continued state of peace; and the people of the United States will be ready, with one mind I trust, to stand upon our rights in this matter, and if it must be so, to meet relations, which, much as they must ever deprecate, they will always prefer to injustice or dishonor.

Whether these favorable anticipations as to the continued peace of our country, are to be realized or not, can vary little the calls of public duty upon us. To exempt our people, as far as may be in our power, from the incumbrance of debt and the burden of taxation, and to secure to them the fullest measure of prosperity which unfettered industry can earn, is alike the course of wisdom in either event. In such a condition, they will be best prepared for the profitable enjoyment of peace, or to meet the scourge of war; and if our deliberations and action shall be unitedly and earnestly directed to these ends, we may reasonably hope for the continued smiles of that Almighty Power who holds the destinies of nations in His hand and who has hitherto protected our country and her institutions against every hostile assault.

SILAS WRIGHT.

Albany, 6th January, 1846.

SPECIAL MESSAGES.

January 6. To the Assembly: Transmitting the annual report of the Adjutant General.

January 24. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *January* 24, 1846.

I have the honor to transmit, herewith, the annual report of the Commissary General. To the numerous suggestions to be found in it, I respectfully invite the attention of the Legislature; and the practical importance of some of them appears to me to render them worthy of particular consideration.

Such an amendment of the law, prescribing the duties of the Brigade Inspector, as shall make it the especial duty of that officer to inquire for, and particularly examine, all arms belonging to the State, and loaned for the use of corps of the militia, and to make a special report to the proper department of their condition and manner of being kept, preserved and secured, would be important in the present condition of things. And should a more extended system of loaning arms for the use of the militia be adopted, either by new legislation, or under the act of the last session, the importance of this additional safeguard to the public property would be greatly increased.

The suggestions of the Commissary General, as to the influence upon the uniformed corps of the militia, of a further diminution of the parades of the infantry generally, or a reduction of the fines imposed for failure to attend those parades, are worthy of careful consideration, connected with any proposed changes of the present law in these particulars. [See note 17.]

The importance of a close of the negotiations between the State and the United States, for the sale of the Staten Island property, is not overrated by the Commissary General. It is equally the plain interest of both governments that the sale should take place, without further delay, that the Federal Government may proceed with the works necessary for the defence of the port and harbor of New York, and that the State may apply the purchase money to the erection of an Arsenal in, or in the vicinity of, the city, such as the protection and security of the public arms and munitions of war, required to be kept near that point for the efficient defence of the town, demands.

I have reason to know that members of the delegation in Congress from this State are giving their active attention to this subject, and should the Legislature concur in the opinion that the conclusion of these long pending negotia-

tions, and the completion of this sale, is thus important to the public interest, State and Federal, its expression, it is believed, would give all the aid required, to enable the delegation from the State to accomplish that object, during the present session of Congress.

SILAS WRIGHT."

January 27. To the Assembly; Transmitting a report from the Governor and Secretary of State relative to the distribution of the volumes of the Natural History of the State pursuant to the act of 1844, chapter 254. The report appears as Assembly Document, No. 41.[19]

February 4. To the Senate:

"The resolution of your Honorable body of the 2d instant, calls upon me 'to transmit to the Senate the report made by the special agent on the affairs of the Seneca Indians, resident on the Cattaraugus and Allegany reservations; also such other papers as he may deem necessary for the information of the Senate relating to said Indians, which may be in his possession.'

In reply to this call, it is proper that I should state that no agent has been appointed by me to visit these Indians, or their reservations, or to communicate with them in any manner, or upon any subject. The agent referred to in the resolution, as I suppose, was the person appointed under the provisions of § 15, of the act chap. 140, of the laws of 1845, to take the census of the Indians upon the reservations named in the resolution, and I believe upon all the reservations then occupied by the Senecas. That person was Henry R. Schoolcraft Esq. of this city. Before leav-

[19] Chapter 132, passed May 5, authorized the Secretary of State to sell the Natural history and geological map of the state to incorporated academies, public libraries and literary associations which might apply therefor, and as soon as the remaining volumes of the history were published, the Governor and Secretary of State were authorized to sell the copyright, or separate portions thereof.

ing, under his appointment from the Secretary of State, Mr. Schoolcraft called upon me, and wished to know if I had any suggestions to make to him, or any directions to give, in relation to the discharge of his duties under the act referred to, or in relation to the interests of the Indians he was about to visit.

In addition to various suggestions relating to his general duties under the census law, I conversed with Mr. Schoolcraft upon the subject of the difficulties existing between these Indians and the government of the United States, growing out of the two last treaties made with them, touching the surrender of their reservations, or of some of them, to the persons holding the pre-emptive right to the lands from the State of Massachusetts. I spoke, also, particularly of the law of the last session; (chap. 150, of 1845) informed him that I had received a communication purporting to come from some of the Chiefs, signifying that they were dissatisfied with some of the provisions of the law, and had postponed holding the election provided for, under § 5 until May, 1846; and expressed my apprehension that the Indians would not finally carry the law into execution, so far as it depended upon them. After giving to Mr. Schoolcraft all the information I possessed upon this point, I expressed a desire to know the real feelings of the Seneca nation in regard to this law, and requested him, as far as he should be able to do so, without exciting any suspicion of a desire, on my part, or on his own, to influence their opinions, to inform himself of the true state of public opinion among them in regard to the law, and of the probability of its adoption, or rejection by them, so far as their action could do either.

Under date of 15th October, Mr. Schoolcraft wrote to me from New York, and transmitted a letter from the chairman and clerk of a council of the Indians, dated, "Council House, Cattaraugus reservation, September 3, 1845," giv-

ing the information that the Chiefs had concluded to accept the law, with sundry amendments, which they would subsequently prepare and transmit to me.

In the month of October, or November, I received papers purporting to be a formal acceptance and adoption of the law, and the proceedings of an election under it, giving the names of the several officers elected, a list of the Chiefs present and voting, and of those absent, and, as I think, the state of the vote upon the adoption of the law. These papers I considered of such importance as to require their careful preservation, and I transmitted them to the Secretary of State, with a request that they might be filed and preserved of record in his office. They are not, therefore, in my possession, and I speak of them from memory.

Under date of the second of December, the person who is acting as the attorney of the Seneca Indians, under the law of the last session, C. R. Leland, Esq., of Irving, Chautauqua county, transmitted to me a remonstrance against the validity of the proceedings last above spoken of, purporting to be signed by a large number of the Chiefs, and a still larger number of the warriors of the Seneca Nation.

In the remonstrance, the intimation is given that the adoption of the law, was induced by arguments and statements made use of by Mr. Schoolcraft, in consequence of which, I called upon the gentleman, and he made to me a full statement of his interference in that matter.

Under date of 30th December, Mr. Leland transmitted to me suggestions of amendments to the law.

A remonstrance against the authority from which these proposed amendments proceed, and the legal constitution of the committee to prepare and propose them, has also been received, bearing date on the 12th January, 1846. This paper also asks a delay of legislative action, until the wishes of the whole Seneca Nation can be fairly and fully expressed.

All the papers hereinbefore referred to, except those relating to the acceptance and adoption of the law, and the election under it, which have been deposited in the office of the Secretary of State, are herewith transmitted to the Senate, and a list of them is annexed.

As several of these papers refer to the attorney before named, and speak of his position, and employment, an explanation upon that point becomes necessary.

The second section of the law of the last session requires the appointment by me, by and with the consent of the Senate, of an attorney for these Indians, 'who shall have been a counsellor in the Supreme Court of this State for three years or more.' Long before the act passed, Mr. Leland was strongly recommended to me for this appointment, both by the Indians and by citizens; and not being aware, until the act was presented for my approval, on the 8th of May, that the qualification above expressed was contained in it, I had made no inquiry upon that point. After having signed the law, I made inquiry of the members of the Legislature from the county, and others, but none could answer as to whether Mr. Leland was a counsellor of the Supreme Court, or how long he had been so. Inquiry was made at the office of the clerk of the Supreme Court in this city, but the fact could not be ascertained there, as it was said no other list of counsellors was kept in that office than of such as took their admissions at this place. In the meantime Mr. Leland was addressed upon the subject.

At length a printed list, which had been published more than three years previously, was brought to me, headed "A list of Attorneys and Counsellors of the Supreme Court of this State," and finding the name of Mr. Leland upon that list, I at once nominated him, to the Senate, and the nomination was confirmed. Two days after the adjournment of the Senate, on the 14th of May, a letter from Mr. Leland informed me that he was not a counsellor of the Supreme Court, although he was entitled by time to an admission as counsellor.

I did not consider it in my power to correct the mistake until the meeting of the Senate. If the appointment was void, as I was inclined to think it, no vacancy had happened in the recess of the Senate, so that I could fill it during the recess; and if the office was to be considered as filled, as a matter of course I could not vacate it. I am informed that Mr. Leland took the oath of office and has acted as the attorney for the Indians from the time of the appointment.

This explanation would have been earlier made to the Senate, if the subject had not escaped my recollection; and another nomination would now be made to that body, were it not that the Indians ask such a modification of the law as to enable Mr. Leland to continue in the office. Under these circumstances, and considering the location of Mr. Leland a very favorable one, I deem it to be my duty to suspend farther action, until time shall be allowed for the Legislature to express its pleasure upon the subject.

SILAS WRIGHT."

February 17. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *February* 17, 1846.

"I have the honor herewith to transmit a communication from the Secretary of War of the United States, asking that the consent of this State may be given to the purchase, by the General Government, of parcels of land within the State, for the erection of works of defence upon our northwestern frontier. The points, where it is desired to make the purchases, are designated in a communication from the head of the Engineer department, and also in the draft of a bill accompanying the letter of the Secretary of War, which are also herewith transmitted.

The importance of the action of the Legislature, during its present session, is suggested in the letter of the Chief Engineer; and a reference to the resolution of Congress will

show that the consent of the Legislature to the purchase of the sites, is made a condition precedent to the expenditure of any public monies of the United States upon the defensive works proposed to be constructed.

I respectfully invoke the early attention of the Legislature to this subject, as one of deep interest to the country, and especially to this State.[20]

SILAS WRIGHT."

March 19. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *March* 19, 1846.

"In reply to the resolution of the Honorable the Assembly of the 17th instant, referring to me 'the petition of sundry inhabitants of the county of Otsego, praying that Marcus Aylesworth may be restored to the rights of citizenship,' I have the honor to inform the House, that, finding, upon inquiry from a member of the House from the county of Otsego, that the petitioners are respectable citizens of that county, upon whose statements reliance might be safely placed; and it appearing from the petition that Aylesworth, since his pardon from the State Prison in 1844, has demeaned himself honestly and as a good citizen, and has, by his conduct, inspired his neighbors and acquaintances with the conviction that he deserves to be restored to the enjoyment of the rights of a citizen, and relieved from the disabilities consequent upon his conviction, I have issued a pardon to accomplish those objects.

The petition is retained upon the files of this office, as a voucher for my action.

SILAS WRIGHT."

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[20] By chapter 25, passed March 7, the state granted authority to the United States to acquire lands for military purposes or for fortifications in or near Buffalo, at or near the mouth of the Genesee River, at or near Sacketts Harbor, and also to purchase an island or islands in the St. Lawrence River between St. Regis and the Thousand Islands.

April 20. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *April* 20, 1846.

"I respectfully transmit to the Honorable the Assembly, a memorial placed in my hands, yesterday, from 'the sachems, chiefs and warriors of that part of the Seneca nation of Indians residing upon the Tonawanda reservation.'

The subject to which this memorial relates is now before the Assembly, and in the hands of a select committee of the house; and as it is not in the power of the executive to interpose in favor of these people, I deem it proper to make this disposition of their memorial addressed to me.

The treaties of which they complain were made between the United States and the Seneca nation of Indians, and this State was in no way a party to those contracts. The pre-emptive right to the lands ceded by the treaties was granted to the State of Massachusetts by this State, in a compact between the two States for the settlement of jurisdiction and boundaries, entered into, I think, in the year 1787; so that in the negotiation of these treaties, the State of Massachusetts, and not the State of New York, held the position of assent or dissent, as contemplated by the twelfth section of the seventh article of the Constitution of this State, according to my understanding of the subject, and I believe the consent of the State of Massachusetts to the treaties in question was obtained.

Under these circumstances, whether it is in the power of the Legislature of this State to afford any relief to these Indians, is a question appropriately addressing itself to the Legislature, as well as what that relief shall be, in case any can be extended.

The memorialists state that the subject of the treaties is now before the Senate of the United States; and what they seem to apprehend, and the evil against which they ask

protection, is an execution of the treaties, by dispossessing them of their lands before that body shall be permitted to bring its deliberation and action to a conclusion.

I believe it to be true that the reservation upon which these memorialists reside was conveyed by these treaties, not only without the concurrence, but against the remonstrance of all the sachems, chiefs and warriors of this band of the Seneca nation; but the question, whether the other sachems, chiefs and warriors of the Seneca nation possessed the power, according to the customs of the Indians, and to their rights of property in their reservations, to convey a valid title to the lands possessed by this band, is one I am wholly unable to decide. I had supposed that a majority of the chiefs of an Indian tribe possessed that power; but the memorialists dispute the point, and I have not the means of determining it.

I cheerfully submit the matter to the consideration of the legislature.

SILAS WRIGHT."

The memorial appears as Assembly document 1846, No. 197. It referred to the treaties of 1838 and 1842 relative to Indian reservations, stated that the subject was again under consideration by the Senate of the United States, recited the threat of the Ogden Land Company to remove the Indians from the Tonawanda reservation under a pretended claim of superior title, called attention to the fact that under the State Constitution the assent of the Legislature was necessary to the sale of any Indian lands, and asked the Legislature to withhold its assent from any pretended sale to the Ogden Land Company.

May 13. The Legislature adjourned without day.

PROCLAMATION DECLARING DELAWARE COUNTY IN A STATE OF INSURRECTION.

The following is Governor Wright's proclamation declaring Delaware County to be in a state of insurrection, (see *ante*, p. 236):

PROCLAMATION,

By SILAS WRIGHT, Governor of the State of New York.

The sheriff, district attorney, judges of the county courts, and other officers of the peace and citizens of the county of Delaware, have laid before me a body of evidence, to satisfy me that the execution of civil and criminal process in that county has been forcibly resisted by bodies of men; that combinations to resist the execution of such processes by force, exist in that county; and that the power of the county has been exerted, and is not sufficient to enable the sheriff and his deputies, having such process, to execute the same; and have applied to me to exert the authority with which I am clothed by the 19th section of the act entitled 'An act to enforce the laws and preserve order,' passed April 15, 1845.

The evidence presented to me, establishes satisfactorily the following among other facts:

That the execution of civil and criminal process began to be resisted by bodies of men, in the county of Delaware, as early as March last.

That combinations to resist the execution of such process by force, under the denomination of anti-rent, or equal rights associations, commenced being formed in that county, more than one year ago.

That these associations have engrafted upon their organization a force of disguised, masked and armed men, subject to the orders and directions of the officers of the associations, and by and through which force, under the protection of its disguises and masks, the resistance to the execution of legal process is to be made, and is made.

That the members of this armed force are denominated Indians, or natives; are organized in bands called tribes, and have their leaders and commmanders, called chiefs, having names in imitation of Indian chiefs.

That the officers of the associations, and all the members of the armed force, are sworn to observe and support the constitution of the association, and to keep secret all things communicated, or known to them, which require to be kept secret, and, in the case of the disguised and armed men, the further clause is added, that they will stand by each other as long as life shall last.

That the avowed and declared object of the associations is to prevent by force the collections of rent, and that the express duty of the armed force, is to resist the execution of process issued for that object; but that the case of resistance by force against the execution of legal process, and the discharge of their duties by the officers of the law, have not been entirely confined to proceedings for collection of rents, but have been extended, in some instances, to other legal process.

That these associations and organizations of a disguised, masked and armed force, are not confined to the county of Delaware, but exist to a great, if not to an equal extent in several adjoining counties, and that the organizations, armed and unarmed, wherever they exist, have and avow a common object, make common cause, and act in entire concert and co-operation.

That in all the prominent and flagrant cases of resistance to the process and officers of the law, in Delaware and other counties, the members of these armed bands of disguised and masked men have been the prominent actors; and that, in the county of Delaware, before the passage of the law above referred to, this resistance had been carried to such an extent, as to require the utmost exertion of the power of the county to preserve peace and order, and execute criminal process only.

That early in the month of May, after the passage of the law of the 15th of April last, above referred to, the sheriff of the county of Delaware applied to the Governor, under the 2d section of that law, and received authority to organize an armed guard of 400 men to aid him in the preservation of order, and the execution of civil and criminal process within the county.

That a strong feeling has existed in the county against that provision of the law, which charges upon the county, the expense of such an organized and armed force; the citizens contending that it was unequal and unjust to require of them to encounter, in their persons, the labor and peril of enforcing the law against these armed combinations of their own and the adjoining counties, and thereby subject the property of Delaware county only to the taxation necessary to meet the expenses thus incurred; and that the sheriff has been unable to organize a guard, under the 2d section of the act, of sufficient strength and permanency to enable him to execute the civil process placed in his hands, or calling for execution.

That the consequence of this state of things has been a substantial suspension, in the county of Delaware, of all process for the collection of rents, from the close of the serious disturbances there, in March last, until a very recent and very signal instance, to be hereafter particularly noticed; the sheriff having undertaken, within that time, to execute and carry out such process, in but one instance, and in that, a voluntary settlement between the parties relieved him, before the point was reached, at which resistance has been usually met; and he having, in numerous other instances, declined to receive and attempt to execute such process.

That, some time during the last month, pursuant to proceedings by way of distress for rent, against a man by the name of Moses Earl, of the town of Andes, in the county of Delaware, the sheriff had appointed a day for the sale,

upon the premises, of the property distrained, and, upon the day of sale, attended at the place, and met a large collection of persons, whose appearance and conduct satisfied him that their object was to prevent his sale; not one of whom would make a bid upon any of the property offered for sale, and from whom he learned that a disguised and armed force of some sixty men was secreted in the woods adjoining the field where he was trying to sell the property; whereupon he adjourned the sale to the 7th day of the present month, at the same place.

That, on the 7th day of the present month, the sheriff attended at the place of sale, accompanied by his undersheriff, Osman N. Steele, Erastus S. Edgerton, a constable of the county, and Peter P. Wright, the agent of the landlord, who attended to bid upon the property. These persons found upon the premises a force of disguised, masked and armed men, about 220 strong, by which they were surrounded as soon as movements were made indicating a preparation to enter upon the sale of the property, and by a portion of whom, in obedience to the order of one acting as their chief, the horses upon which Steele and Edgerton were mounted, were shot and killed, and Steele was mortally wounded and survived but six hours, three balls taking effect in his person, and from twelve to twenty guns being fired. The execution of civil process thus resisted, the enforcement of the law prevented, and the order and peace of society deeply and irreparably disturbed and broken, in this instance.

That this cold and cruel murder of a most estimable and valuable citizen, and brave and faithful public officer, for no other cause or provocation, than the discharge of his official duty, as he had solemnly sworn to discharge it, has so aroused the energies of the patriotic and law-abiding citizens of the county of Delaware, as to enable the sheriff, for the purpose of the arrest and punishment of the murderers, their aiders and abettors, to organize a guard, or

posse, under the 2d section of the law referred to, in conformity to the authority obtained from the Governor, in May last, for that purpose; but only for a very short period, which has already expired, or is just about expiring, and without the hope or expectation, on the part of the sheriff, of being able to avail himself of the aid of that guard, or *posse,* for any other purpose than the execution of the criminal processes, to which this startling murder may give rise.

That it has been subsequently ascertained that, in addition to the disguised and armed force of 220 men, which actually surrounded the sheriff and his assistants, and shot down the under-sheriff, an additional similar force of 40 picked riflemen was stationed in the bushes by the side of the road, and near to the place of sale, with directions to watch the *posse,* which it was apprehended would follow the sheriff; and come to his aid; to order it to halt, if it should attempt to pass; and to shoot down the men who composed it, if they should not obey the order to halt; thus making the whole disguised and armed force, assembled upon this occasion, to resist the execution of the law, and of civil process, 260 men, or more than that number.

That considerable portions of this disguised and armed force were drawn from two of the adjoining counties, and were not citizens of the county of Delaware.

That these organizations to resist the law and the execution of its process, have extended themselves to the magistracy of the county of Delaware, and that justices of the peace of some of the towns in that county are found enrolled as members and officers of the associations, if not under the Indian disguises, bearing arms to resist the law by force; forgetting the oath of office they have taken, and taking themselves and administering to others, oaths to conceal violations of the law; to the ministerial officers of the county, and that constables are also found members of one or both, of these combinations: To the officers of the

towns, and that supervisors, the members of the local Legislature of the county, are members of the Anti-Rent associations swearing to support their constitution and pledge, if not Indians, swearing to bear arms against the law.

That one of the obligations, which every person takes upon himself, on becoming a member of an Anti-Rent association, is to make fixed and regular contributions to the funds of the association; that a stipulated rent of two cents upon the acre of all the land held by the members of these associations is levied and paid to the treasurers, to meet the expenses of the organizations; that the moneys thus collected are paid out, under the direction of a committee, to purchase materials for dresses, masks, arms and ammunition for the Indians, and to pay the expenses of their subsistence and entertainment, when called out, as well as to meet the expenses of law suits and litigations; and where there is a surplus in the treasury, to pay the Indians for their time spent in the service to which they are devoted.

That 1000 or more persons have enrolled themselves and taken the prescribed oath, as Indians, within the single county of Delaware, while a much larger number have become members of the anti-rent associations, and that the obligations assumed towards each other, certainly by the Indians, if not by the members of the associations also, strongly imply, if they do not expressly enjoin, efforts on the part of those at liberty to rescue those under arrest, and in the custody of the law, for acts performed as Indians, or as members of an association, and in furtherance of the objects of those organizations.

That, since the murder of the under-sheriff Steele, in the manner before related, the proceedings of the authorities and citizens of the county of Delaware have been marked by a most praiseworthy vigilance and energy, to arrest and bring to justice these resisters of the law and

disturbers of the peace of the county; that many arrests have been made, and fifty or more prisoners are now confined in the county jail, either awaiting examinations, or committed to answer to the charges of crime, some twenty or more of whom are charged as principals or accessories in this murder.

It may be added, too, that individuals, and assemblages of men, have, within the period mentioned, frequently appeared in the public highways, in the fields, woods, and other places in the county, and sometimes in the face of the Sheriff and his officers, both disguised and armed, in open violation of the provisions of the act, entitled 'An act to prevent persons appearing disguised and armed,' passed 28th January, 1845; and that such persons, so committing offences subjecting them to punishment in the state prisons, have not been arrested; thus affording evidence that the power of the county, as faithfully exerted as the sheriff and his officers could exert it, has been insufficient for the execution of criminal process, and the preservation of the criminal law within the county, in cases where the violations of that law have not been attended with consequences calculated to shock the feelings of the citizens, by the imminent danger to, or the wanton destruction of, human life.

The fact that the law makes no provision for mounting the men to be employed by the Sheriff as a *posse,* or guard, or for payment for the service, or for the subsistence of horses for their use, is stated by him as one prominent cause of his inability to enlist and organize an efficient body of men for the service required. The nature of that service palpably required that a large share, at least, of the sheriff's guard should be mounted, and it is scarcely possible that any moderate number of men could have made him an efficient *posse,* all serving on foot.

In the face of these facts, I cannot entertain a doubt that the testimony presented brings the case fully within the

provisions of the 19th section of the act of the 15th of April last; that the execution of civil or criminal process has been forcibly resisted in the county of Delaware; that combinations to resist the execution of such process by force do exist in that county; that the power of the county has been exerted within the true intent and meaning of the act, and that it is not sufficient to enable the officers of the county having such process to execute the same.

I do therefore, hereby, in conformity with the provisions of the said 19th section of the said act, proclaim and declare the County of Delaware to be in a state of insurrection, according to the provisions, and true intent and meaning of the act of the legislature of this State, entitled 'An act to enforce the laws and preserve order,' passed 15th April, 1845.

In making this declaration, it becomes my duty to draw the particular attention of all the citizens of the State, and especially the citizens of Delaware and the adjoining counties, to the provisions of the 20th section of the act referred to.

Any person who shall, after the publication of this proclamation, resist, or assist in resisting, the execution of legal process; or who shall aid, or attempt, the rescue or escape of any prisoner from lawful custody or confinement, or who shall resist, or aid or assist in resisting, any force ordered out by the Governor, in the county of Delaware, is, by this section of the law, upon conviction of either of these offences, to be adjudged guilty of a felony, ' and punished by imprisonment in the State prison for a term not less than two years.'

It becomes my further duty to invoke the especial and earnest attention of all civil and military officers of the State to this proclamation, to the provisions of the two acts of the legislature particularly referred to in it, and of the responsible duties it devolves upon them. They are the guardians of the law for the people of the State, whom

they have been appointed to represent and serve. They have been selected to expound, administer, and execute the law, and they have solemnly sworn that they will faithfully discharge the duties of their respective offices, according to the best of their abilities.

To such officers within the county of Delaware, and the surrounding counties, this appeal comes with peculiar force. It is to enforce the law in their immediate neighborhoods that the aid of the State is invoked. Around and among them the spirit of insurrection, of combined and organized resistance to the law, prevails and shows itself. The discharge of their whole duties, and the faithful redemption of their official oaths, are demanded alike by patriotic feeling, moral duty, and a plain sense of personal justice; and especially, if any one among their number, holding a public trust, and resting under the obligations of that oath, shall become lost to a just sense of his duty to himself and his State, and shall yield to the insurrectionary influences around him, it is incumbent upon them, while they boldly detect and expose and bring to justice the delinquent, to show by their better conduct and example, that our free institutions are not to be surrendered for a state of disorder, and violence, and crime, and murder, even though some few of their constituted guardians should not be proof against such delusion.

To the freemen of the State I can make no stronger appeal than is presented in the simple narration of facts I have set forth. These facts show the regular progress to its result in crime and blood of every attempt to set aside the regularly constituted tribunals of civil society, organized for the protection of personal rights and the redress of personal wrongs, to make might the measure of right between citizen and citizen. Masks and disguises are never assumed to protect men in the performance of acts towards their neighbors, which the judgment and the conscience approve; and no other acts will promote the peace, order or

prosperity of society, or the happiness or true interest of him who performs the action. Secret oaths are only administered to add to the protection of the masks, when the conscience proclaims that he who is trusted to look behind the mask may be as dangerous as he who looks upon it; that the danger is in the truth, and is to be apprehended from all who can tell it. When the mind becomes so deluded as to rely upon protections like these, and to act from the promptings which a sense of security of this character, if indulged, will never fail to engender, high crimes are the certain fruit, and the charm of the protection vanishes only when the guilt is incurred. The intelligent freemen of our State will not seek to change their peaceful and happy and prosperous institutions, the fruit of the toil and blood of our revolutionary fathers, for a government resting upon such a basis and producing such fruits. Justice is the emblem of their government, and her light is truth.

To the tenants who disapprove of this disguised and armed force, and have refused to give their aid and countenance to its organization and action, and they are believed to constitute a numerous and influential body of men, the present presents a peculiarly appropriate occasion to mark more distinctly their separation from proceedings which cannot fail to be fatal to a good cause, and to prejudice good men. If they feel that the tenures by which they hold their farms are onerous; not in accordance with the genius of our institutions, or the spirit of our people; and that they ought to be changed to freeholds; let them see, and feel also, that the natural sympathies of the great body of our freeholders must be with them in these impressions, and that the sure way to avert these sympathies is to attempt to accomplish a worthy end by unworthy means. Let them remember that their present tenures have resulted from voluntary contracts, freely entered into between themselves, or their worthy ancestors, and the landlords from whom they hold; and that the readiest, if not the only way,

to make the change they desire, is by a contract equally voluntary between themselves and those same landlords. Let them be assured that, if they fulfill their contracts hitherto, and offer terms of commutation of their titles, which are just, and which appear to be so to fair and impartial minds, an enlightened public opinion will bring about the acceptance of such terms by the landlords.

To the proprietors of these leasehold estates, the landlords of these tenants, the present crisis should not be without its lessons of wisdom. Indefensible as have been the attempts to repudiate their solemn contracts, and to wrest from them by force the remedies secured to them by the Constitution and the laws for breaches of those contracts, they should not fail to see, at the foundation of these lawless proceedings, a rapidly growing dissatisfaction at the perpetuation of tenures, not in accordance with those by which the great body of the lands of our country are held, and not consonant with the feelings of our people. And, while the power of the State must and will be exerted to enforce the law, protect private rights, preserve the peace and order of society, give security to the life of the citizen, and prevent the prevalence of anarchy and violence, so far as it rests in their power, they should be ready to remove the causes of like troubles for the future, by a prompt and liberal arrangement of arrears of rent, whenever an opportunity shall offer; and, by tendering generous terms to the tenants, upon which they will change the tenures to fee simple titles, put an end for ever to this perpetual relation of landlord and tenant — a relation already so fruitful of anything but peace and prosperity to either of the parties. Even if it shall become necessary to employ the military power of the State to enforce the law, as connected with their peculiar interests, they should be prepared, upon all occasions and under all circumstances, to show to the public that it is no part of their object to be benefitted in their pecuniary interests, by the misfortunes

or the faults of their ill-advised and misguided tenants; but that they are ready to consider generously, the ability and the means of each tenant to pay, and, even if a coerced sale of his property must be the only rule of settlement, that they are prepared to become liberal purchasers at such sales.

To the disguised men themselves, and to those less worthy than they who press them forward into the danger from which they themselves shrink, I have only to say that wrong acts never serve even a good cause; that persistence in crime cannot mitigate the heavy weight upon the mind and conscience of the first crime; and that no disguises are perfect enough to protect the heart from the eye of Him who sees its thoughts and intents.

For the sake of the character of our State and of our people, as well as for the peace and prosperity and harmony of our society, I earnestly hope the day may not be distant, when I may be called upon to discharge another and a far more pleasant duty, under a provision of the same law under which I now act, by revoking this proclamation.

Yet the law must be enforced. Our institutions must be preserved. Anarchy and violence must be prevented. The lives of our citizens must be protected, and murder must be punished. And when that portion of our citizens who, now transported by passion and led away by singular delusions, are ready to strike down the law and its ministers, shall become convinced that a different course is alike the part of wisdom and of duty, and shall again submit themselves to the laws of the State, then, and not before, can I expect to be permitted to perform that more pleasing duty.

In Testimony whereof, I have hereunto affixed the privy seal of the State. Witness my hand, at
[L. S.] the city of Albany, this twenty-seventh day of August, in the year of our Lord one thousand eight hundred and forty-five.

SILAS WRIGHT.

GOVERNOR WRIGHT'S LETTER TO THE SHERIFF OF DELAWARE COUNTY.

The following is Governor Wright's letter to the sheriff relative to the commutation of the sentence of the persons convicted of the murder of Osman N. Steele, (*ante*, p. 237):

"EXECUTIVE CHAMBER,
ALBANY, 22*d November*, 1845.

GREEN MOORE, Esq., Sheriff of Delaware County.

SIR.—The official reports of the testimony given upon the trials of John Van Steenburgh and Edward O'Conner, lately convicted, before the Court of Oyer and Terminer of your county, of the murder of Osman N. Steele, have been placed in my hands by the Circuit Judge. These reports the statute makes it my duty carefully to examine, independently of any application to interfere with the sentences of the prisoners, and gives me authority to require the opinion thereon of the Chancellor, the Justices of the Supreme Court, and the Attorney General, or any of them.

Upon both of these trials, the question of law was raised, whether being present at the time of this murder, armed and disguised, and engaged in resisting the execution of the law, in the manner particularly described in the act of the last session, entitled 'An act to prevent persons appearing disguised and armed,' was a 'felony,' within the true intent and meaning of our statutes. The Court of Oyer and Terminer decided that these acts did constitute a 'felony;' and therefore that the defendants, if guilty of them, were guilty of the murder, by the terms of the third subdivision of section fourth of the Revised Statutes, volume 2, page 657, which enacts that the killing of a human being, when perpetrated without any design to effect death, by a person engaged in the commission of a 'felony' shall be murder.

Upon the trial of O'Conner, testimony given by him before the Grand Jury, upon the examination of the case of another person charged with this murder, was offered in evidence against himself.[e] His counsel objected to the evidence as inadmissible, because he was called to testify before a tribunal, where he could not be allowed counsel to advise him as to his rights and liabilities, and where there was no court to caution him not to answer questions which would criminate himself. The Court of Oyer and Terminer overruled the objections and admitted the evidence.

On all occasions of this sort, I have felt it to be my duty to avail myself of the advice of the Attorney General and Judges, separately from the particular submission to them of any questions of law, which may have been raised upon a trial for murder. In these cases a desire for this advice upon these questions would have rendered certain my submission of the reports to them, or as many of them as I could conveniently reach, had I not been particularly urged to do so; but one of the counsel for the defendants presented these questions to me, argued them before me, and urgently requested me to submit them to the Justices of the Supreme Court for their opinion.

The reports of the Circuit Judge have been submitted generally to these Judges, and their attention particularly drawn to the two questions of law before stated. They have expressed their opinions fully and unanimously upon both, sustaining the decision of the Court of Oyer and Terminer in each case. I am free to say that, after full examination and reflection, I find myself compelled to come to the same conclusion that the Court of Oyer and Terminer decided both of these points correctly.

This forces upon me the further conclusion that the trials and convictions of these defendants were regular and in conformity to the law; and, the testimony leaving no doubt upon my mind that they were both present at the murder

[e] U. S. Const. 5th Am.; see N. Y. Const. 1846, art. 1, § 6.

of Steele, armed and disguised and engaged in resisting the execution of the law by the sheriff, that they are both legally guilty of that murder. The verdicts of the juries, therefore, in each of the cases, I consider fully sustained by the law and the facts.

I have found it exceedingly difficult to persuade myself that I can, consistently with a proper discharge of my public duty, go any farther in considering the question of interference on my part with the sentences which the law has pronounced upon these unfortunate and misguided men.

Yet the cases are so novel and extraordinary, and the evidences before me are so abundant, of the existence of a deep and widespread public feeling, demanding a further examination into the facts and circumstances of these convictions, and into the more minute relations of these defendants to that bloody tragedy, that I have felt constrained to step over this limit, and take a more enlarged view of the momentous question thus pressed upon me.

A most cold, deliberate and cruel murder was committed, in the open day, and in the midst of a vast concourse of the citizens of this State; and, beyond some five or six, there was not a man to raise his hand or voice against the bloody deed, while hundreds were active and guilty participators, directly or remotely, in the dreadful crime. These were citizens of our State assembled, with arms in their hands, not to defend our free institutions, but to beat them down by force; not to sustain the Constitution and the law, but to violate both. The offence, and the only offence, of their victim was that he had exerted himself, upon former occasions, and was then exerting himself, as a public officer of the State, to perform the public duty appropriately assigned to him, and thus to discharge himself from the obligation of the solemn oath upon his conscience. It is not true, as has been asserted, that the assault upon Steele was provoked, or invited, by a fire from himself upon the disguised men; as the testimony upon the trial of O'Conner

positively establishes the fact that his pistol was not discharged at all upon that occasion. The offence against the law and its officers, which moved this body of citizens to armed and bloody resistance against them, in truth was that they were to be compelled to fulfill their own voluntary contracts, and to pay debts, which they had acknowledged themselves, by the most solemn legal obligations, justly to owe.

In this armed resistance to the laws, thus induced, were engaged the aged, the middle aged and the young; the wealthy, the men of moderate means, and the poor; the influential and the obscure; and they carried their resistance to murder. These are the simple facts of the history, undisputed and indisputable.

The whole public mind was shocked, and every man, whose moral principles were not perverted, whose love of peace and order and law were not paralyzed, rushed to the aid of the civil officers. The guilty were pursued and brought forth from their hiding places, to answer before offended and violated justice for their crimes against the peace and rights and lives of their fellow citizens. They numbered hundreds, some thirty or more of whom had been arrested and placed within the custody of the law, all of whom were indicted for the murder.

The most sanguinary executors of the laws of a civilized State would not, at this day, have contemplated the execution of even this number of men for this single murder; and yet the majority of the guilty, and among them those believed to be the most guilty, both as instigators and perpetrators of the crime, were at large, having fled beyond the reach of process, or secreted themselves too securely for the vigilance of the ministers of justice.

Under these circumstances, the Court of Oyer and Terminer assembled at Delhi, to make this fearful jail delivery. The responsibilities resting upon the public prosecutors and the Court were immense. They were in the midst of an

alarmed, excited, and to a great extent impassioned community. Their first duty was to sustain the supremacy of the laws; their second, as far as it could be done by their action, to restore peace and order and harmony to a broken and distracted society.

The public wish and expectation naturally was that the severity of punishment should be visited upon the leaders in the disturbances, and the actual perpetrators of the death; upon the influential commanders, and not their obscure followers. The standing and the acts of the respective criminal parties were not before the public, and, as a very natural consequence, its impressions as to the legal guilt of the various individuals implicated followed its judgment of the moral guilt of each, formed from their apparent relations to the crime. The reflection was not generally made, that he who had the deepest and most direct interest; who exerted the strongest influence in bringing together that illegal assemblage of armed men, and in exciting their passions to the point of murder, might have been sagacious enough not to have presented himself upon the bloody field; not to have disguised and armed himself, and not to have taken part in the commission of the felony, which must precede and lay the foundation for the guilt of murder. It was not sufficiently remembered that the leaders in all groundless and criminal insurrections, those who are fully aware of the whole length and breadth of the guilt to be incurred, are too apt to be absent in the hour of execution of their criminal plans, and leave the liability to punishment upon their less guilty dupes.

The examinations before the coroner's jury, and before the grand inquest of the county, proved to the public prosecutors, and to the court, that the principal leaders in this insurrection, to a very great extent, had observed the cautions so common to men occupying similar positions, and had kept themselves from the scene of this murder, or made good their escape beyond the reach of process. These legal

and judicial officers were well aware that all present, disguised and armed, and engaged in resisting the sheriff, were legally guilty of the murder; but they were as well aware that nearly the whole number of those indicted for the murder were so present, and consequently legally guilty of the crime; and that the conviction and execution of any such number, was out of the question.

It was natural, therefore, that they should have studied the facts developed upon these two preliminary examinations, with the utmost care and the closest scrutiny, that they might determine who, among the persons indicted and in custody, and unquestionably legally guilty, were the most guilty in fact, and in the light of a sound moral judgment. It was equally natural, that the question, who among the prisoners actually fired his gun upon the murdered man, should have been a leading and anxious inquiry.

It must not be forgotten either, that the testimony of the sheriff and all those who were present with him, taken upon the preliminary examinations, had shown that the disguises were too perfect for their scrutiny; that they could identify no one of the many persons who fired upon the horses and men, in their full view and within a few feet of their persons; and that the testimony which had been obtained, by way of personal identification, and which could be developed upon the trials upon which they were to enter, must be drawn from unwilling witnesses, parties to the felony and the murder, and men whose every feeling and interest and prejudice must be with the defendants.

The examinations and inquiries of the prosecuting counsel induced the belief in their minds, that Van Steenburgh and O'Conner, were among the number of persons who fired their guns at the time of the murder; and they were led to expect, from what they could gather from the sources of information above alluded to, that they should be able to adduce evidence upon the trials, sufficient to establish the same belief in the minds of the jury. As to no other of the

persons in custody could they collect information, which authorized them to believe that the individual was one of those who fired, much less to hope that they could bring before a jury, evidence to establish that fact.

Hence, the trial of Van Steenburgh and O'Conner for this murder, while from others known to have been present, armed and disguised, and participators in the resistance to the sheriff, pleas of guilt for manslaughter in the different degrees were accepted.

Circumstances developed in the testimony, in Van Steenburgh's case, given on the part of the prosecution, favored very much the belief that he was one of those who fired; but the cross-examinations, and the testimony for the defence, presented facts which may explain these circumstances; and, together with the fact that he is not shown by the testimony, at any time, to have made expressions approving of or justifying the murder, necessarily shake this belief, and leave that point in doubt.

His conviction, therefore, appears to me to rest upon the broad ground of his being present, armed and disguised, and engaged in the commission of the felony, and therefore guilty of the murder, under the 3d subdivision of the 4th section of the Revised Statutes, before referred to. If this be so, he stood upon a par with all those indicted and in custody who were present, armed and disguised at that sale; and there does not appear to be any more reason for visiting upon him the extreme severity of punishment, than upon any one of the others, who were permitted to plead to minor offences, and to receive lighter punishment.

Are there reasons, which should have distinguished him favorably from some of those upon whom the punishment of imprisonment only has been inflicted? He is represented to me as a young man, only about twenty-two years of age; almost without education, scarcely able to read, and not able to write at all; in force and activity of intellect below mediocrity; entirely poor and destitute of real or personal

estate of any description, beyond his very moderate wearing apparel; and obtaining his living by working for wages by the month. These representations, as to this defendant, come to me from sources which I am bound to credit, and they place him in a position in life, and in society, where it is impossible to believe that he can have exerted any material influence, beyond his single personal co-operation, to originate this insurrection, or to give it direction; but, on the contrary, force the conviction upon the mind, that he has been the subject of a superior influence, and the instrument of a superior intellect.

Had the facts in this case been known to the prosecuting counsel exactly as they appear upon the judges' report of the testimony, and had his standing and character been displayed to them in the manner they are represented to me, as I have repeated, I entertain no doubt that he would have been permitted to enter his plea to the charge of manslaughter, without a remonstrance, and that some more commanding culprit would have been selected for trial for the murder. The belief that he was one who actually fired, it appears plain to me, put him upon his fatal trial, as fatal it must be, for all in like condition were legally guilty.

The jurors, in this case, have addressed to me an application in reference to this defendant, in the following words:

'To His Excellency, SILAS WRIGHT,
Governor of the State of New York:

The undersigned, members of the jury on the trial of John Van Steenburgh, convicted as one of the murderers of Osman N. Steele, late under-sheriff of the county of Delaware, do most respectfully recommend him as a fit subject for the exercise of your clemency; that they do not believe him to have been a ring leader on that occasion, and would most humbly beseech your Excellency to commute his punishment. Dated October 1, 1845.'

This paper bears the signatures of the twelve jurors, and came to me, enclosed in a letter from Peter P. Wright, Esq., the gentleman who acted as the agent of the landlord at the sale, and who was one of the most material witnesses for the prosecution, upon this trial. Mr. Wright states that the paper was drawn up by him, at the request of the jury, immediately after the close of the trial, was signed by them, and returned to him, with the request that he would make such use of it as should be thought expedient.

Another paper has been handed to me, dated October 11, signed by eight of these same jurors, much more full and detailed in its language, distinctly declaring that the jury did not believe that the defendant was one of those who fired their guns, and that they rested their verdict upon the express ground of the law as given to them by the judge in his charge, that all those who were present at the sale, armed and disguised, were engaged in the perpetration of a felony, and therefore were guilty of the murder, whether they designed to kill any person or not. This paper, it is said, was circulated, and the signatures of the eight jurors obtained, before it was known to those circulating it, that the whole jury had signed the petition left with Mr. Wright; and that, after that knowledge was obtained, no effort was made to obtain the signatures of the four remaining members of the jury.

The testimony, in the case of O'Conner, appears to me to be much stronger, and develop facts and circumstances going much farther to show, if not a pre-existing murderous design in his heart, at least a contentment with, and approbation of, that fatal result, after it had been produced, than that in the case of Van Steenburgh.

There are portions of the testimony susceptible of a very unfavorable construction towards this defendant, and especially in reference to his extraordinary precautions against being known, and his feelings, subsequent to the crime, in relation to the deed. Still I am aware that those

who listen to testimony as it is given, and see the manner of the witnesses, are much the safest judges of the weight to be given to their evidence, and of the inferences to be justly drawn from the facts they relate. In this case also the jury have spoken, beyond their verdict given in court, and have limited most materially the range of construction and inference, which might otherwise be opened by the reading of the judge's report. Eleven of the jurors have caused to be laid before me a statement, over their signatures, in the following words:

DELAWARE OYER AND TERMINER,

Edward O'Conner,
ads.
The People.

To the Governor of the State of New York:

We, the undersigned, the jurors in this case, respectfully represent that the above named Edward O'Conner was convicted of murder by our verdict, on this 11th day of October, 1845, at the court of Oyer and Terminer now setting in and for the county of Delaware. He was charged with being one of the armed and disguised men present at the shooting of Osman N. Steele, late under-sheriff of the said county, on the 7th day of August last. The proof was clear and positive that he was not one of those who shot. At the time of the firing he was some three rods distant, and immediately quit the ground, and retired back with others, several rods, and, after a delay of some twenty minutes, started in company with them for home. The court charged the jury that all the armed and disguised persons, numbering some two hundred and forty, who were on the ground, engaged in the riot, were guilty of a felony, and therefore guilty of murder, and upon that charge we found the prisoner guilty. There was nothing in the evidence to warrant the belief that he anticipated, encouraged, or approbated the firing, or killing of Steele, or any one else, or the horses.

We believe he had no murderous intention. His character from his youth up, with the exception of his participation in the affair of the 7th of August, and occasionally having disguised before the law against disguising, passed the 28th January last, was proven to have been good. He is about 25 years of age. The evidence that he was among the disguised persons, on the 7th of August, was not positive. Under all the circumstances of this case, we believe that public justice would be better satisfied by a commutation of his punishment to imprisonment in the State prison, and we hereby earnestly recommend to your Excellency to interfere and save this man from the awful doom of death.

Accompanying this statement from the eleven jurors was a letter from the twelfth, in these words:

'His Excellency, SILAS WRIGHT,
Governor of the State of New York:

SIR.—Being called upon by the friends of Edward O'Conner, recently convicted of murder, at a court of Oyer and Terminer, held by his Honor Judge Parker, at Delhi, Delaware County, to sign a petition to your Excellency for a commutation of his punishment in the State prison for life, and being a juror in said court and trial, I did not think proper, on account of something set forth in said petition, to sign it with a majority of my fellow-jurors; and being willing and desirous that a commutation of punishment in the State prison for life might be extended to him, I do cheerfully ask for the same, if consistent with your Excellency's views and prerogatives.'

This strong appeal of the jury, immediately upon the pronunciation of their verdict of guilty against this defendant, coupled with their distinct and unequivocal interpretation of the testimony in the case, upon all the material points, puts at rest any hope the public prosecutors may have entertained of satisfying the jury that O'Conner fired

upon the murdered man. The statement is equally conclusive as to the opinion of the jury that no murderous intention governed O'Conner upon that occasion.

This statement, it is true, is signed by eleven only of the jurors, but as the twelfth concurs fully with the eleven in their recommendation of the commutation of the sentence, though without pointing out wherein he dissents from the paper signed by the eleven, it is fair to infer that he adopts such constructions of the evidence upon the material points as are essential to the conclusion in which all unite.

I feel constrained to state that, but for this strong communication from the jurors, I could not have put so favorable a construction upon the evidence in this case, as this statement compels me to give to it; and it would not have been without serious difficulty that I should have discovered an authority to interfere and arrest the execution of this sentence.

How far I may be right in permitting this statement of the jurors, made without oath, so materially to modify the influence upon my action of their verdict upon oath, has been a serious question with me, and may be with others; but I have not been able to convince myself that I have the right to deny to the statement full authority, as truly expressing the beliefs and disbeliefs of the jurors who have signed it, upon certain points of the testimony particularly stated; and yielding so much to it, brings this conviction upon the same legal ground, upon which my own conclusions, from the report of the judge, have placed that of Van Steenburgh.

The conduct of these jurors, in the jury box, being as they were citizens of the same county, and entertaining, of course, the sympathies of citizens for their fellow-citizens and neighbors; the firmness with which they pronounced their verdicts upon the law and the facts, regardless of consequences to themselves or others, has given to their subsequent statements, in both of these cases, a greatly increased weight, in my mind.

The personal standing, and claims to favor, of this defendant are very different from those of Van Steenburgh. He is older by four years; has a fair education; is intelligent, shrewd and experienced beyond the average of young men of his years and in his circumstances and condition of life. He has too, held leading situations among the disguised men, and was elected a chief by a small band of them, whom in that capacity he led to the place of the sale, on the very morning of the murder. Yet it does not appear that he acted as a chief upon the ground, nor that he has been in disguise, previous to this occasion, since the passage of the law making it a crime to appear disguised and armed.

Inasmuch, however, as I consider his case placed, by the statements of the jurors to which I have referred, and which I have copied, upon the same legal footing with that of Van Steenburgh, I cannot find enough in the difference between the personal standing and influence of this defendant and that of Van Steenburgh, to authorize me to insist upon the execution of this sentence, if I interfere to arrest the execution of the other.

Considering the two cases again together, therefore, and as standing upon the same footing for the purpose of my action, I am bound to assume that these defendants are not among those who fired upon the lamented Steele, and that their guilt consists in their being present, armed and disguised resisting the sheriff, which made them parties to the commission of the felony, and in that way legally guilty of the murder.

There are those who did fire, who did actually commit that cruel murder; and there are those who did lead, command and control that flagrant proceeding.

It is because these defendants are not proved to have borne these relations to that daring crime, that the juries who tried them so strongly urge the commutation of their sentences. And it is upon this ground, as uniformly expressed, that so many of the citizens of the State urge the

same interposition. Upon this point there has been a harmony and a strength of expression, very seldom witnessed upon a similar question. The feeling seems to be almost universal, that while so many were guilty of the actual killing of the lamented Steele, and so many more were principals in urging on, commanding and directing those who were so guilty, a punishment in the State Prison, for life is a sufficient degree of severity to be exercised towards those, who stand in the second degree of moral guilt, as only parties to the felony which laid the foundation for the murder.

In speaking of the public expression, I refer more especially to that proceeding from the counties removed from the excitements which have brought about this insurrection; and from citizens of the highest standing and respectability; all of whom have a deep stake in the preservation of public order, and many of whom were directly and deeply interested in the very controversies which have led to these crimes. That a strong feeling of sympathy for these defendants should have prevailed in the counties pervaded by these excitements, and a strong expression in their favor should have come from them, were results to be anticipated; but that, from the counties where there has been but one opinion and one voice in relation to these disturbances; where all resistance to the law has been viewed with unqualified disfavor; and where this murder has been universally looked upon as the most aggravated offence in our whole calendar of crime, a united voice in favor of the commutation of the sentences of these defendants should be expressed, was not so naturally to have been expected. Yet such has been the fact in numerous instances; and it proves most clearly to me that, while the published reports of these proceedings, and especially of these trials, have been anxiously scrutinized, and while the disposition and determination to sustain the law and punish crime are in no degree yielded, there is a jealous care that no appear-

ance of undue or unjust severity in executing the law shall afford a cloak or apology for future violations.

Thirteen persons are already undergoing their punishment in the State Prison for this crime, four under sentences for life, and nine for terms varying from seven to ten years. In classification, these defendants are supposed to stand with the thirteen, and it seems to be considered that their punishments should be assimilated to the most guilty of their class, and the extreme punishment of the law be reserved for those whose moral as well as legal guilt is without mitigation. This course, it is confidently asserted, will best promote the cause of law and order, because it will avoid all pretext for a complaint that inequality, or injustice, has characterized the execution of the law.

If I had not found the statements of the jurors in these cases, and especially in the case of O'Conner, controlling upon my action in this matter, these widespread and strong expressions of a sound and unprejudiced public opinion, formed from a careful examination of the testimony in the cases, as publicly reported, recommending as they do the same commutations of the punishments, would have added great weight to those statements. The disposition, apparent upon the face of these expressions, to sustain the law, with the least practicable degree of rigor, and to try the effect of lenity rather than severity, wherever there is a ground for reasonable question as to the effect of the one or the other, upon the disturbed portion of the public mind, is worthy of an intelligent and patriotic people, and should have weight with their agents in the administration of the laws.

In addition to these reasons, inclining my mind towards the commutations of these sentences, four of the county judges, who were members of the Oyer and Terminer at the time of the trials of these defendants, have, with a feeling honorable to their characters as judges, communicated to me the fact that they have been solicited to sign petitions

for the commutation of these sentences, and have declined to do so, not because their minds were made up in favor of the execution of the defendants, but because they did not consider it proper or expedient, that they should interfere with the sentences of the court in that way. They state that their information, as to the recommendations of the respective juries, and as to the expressions of the public judgment, is not such as to enable them to form conclusions from those evidences; and that their impressions, derived from the trials, would leave them in great doubt what advice they ought to give, if called upon to give any; but they feel it to be their duty to advise me that, if my sense of public duty, from all the facts before me, shall lead me to the conclusion to commute the sentences, they shall most cheerfully concur in that decision. The remaining judge was absent from the State, and could not be consulted.

I regret to be compelled to say that the evidences before me do not authorize the belief that all disposition to resist the law has been surrendered; and I have no right to hope that there are not those, in the excited counties, who will seek to make the commutation of these sentences the foundation for new encouragement to their deluded followers, who have been engaged in opposition to its execution. I will hope that such efforts will be confined to the few, and that the many, who have been deceived and led away by unprincipled leaders and demagogues, have already seen enough of the unmixed evil of their unlawful course, to satisfy them that neither wealth, nor happiness, nor liberty, nor security are to be found in that direction.

If, however, this reasonable expectation shall be disappointed, and the commutation of these sentences shall be made an encouragement to farther crimes, the public, as well as those entrusted with the execution of the laws, will be consoled by the reflection that lenient means were tried and spurned, before the rule of extremest severity is adopted as the only alternative.

I have been urged to find a ground for commuting these sentences, in the consideration that the offences are political, and therefore entitled to a different and more lenient treatment than ordinary offences of similar grades. To my mind this consideration presents no meliorated aspect of this murder. If I could, in my classification, call this insurrection, commenced and prosecuted to resist the collection of admitted debts, a rebellion, or attempt at revolution of the State government, I should find, I fear, much more room to add the crime of treason to the catalogue already made up, than to discover a ground for indulgence in its political character.

The other considerations, however, which I have presented, have induced me, not without much hesitation, to conclude that the commutation of these sentences may be more beneficial to the cause of law and order, than the execution of the defendants. If I have not mistaken that point, my public duty is plain, and its performance in entire accordance with the personal feelings which must prevail with every citizen. But for a firm belief in its imperious necessity, no one would desire a public execution; and when there appears to be even an equal probability that a mitigated punishment may produce equally salutary results upon the great interests of society involved, a trial of the lenient course would seem to me to be alike the dictate of duty and inclination.

I have, therefore, decided to commute the sentences of the prisoners in your custody, John Van Steenburgh and Edward O'Conner, from that of death, pronounced by the Court, to that of imprisonment in the State Prison, during the terms of their respective natural lives; and I shall send you herewith the necessary papers to authorize you to transport them to, and deliver them at the proper prison.

I am, very respectfully,

Your obedient servant,

SILAS WRIGHT."

PROCLAMATION REVOKING PROCLAMATION DECLARING DELAWARE COUNTY IN A STATE OF INSURRECTION.

The following is the proclamation revoking the proclamation of August 27, which declared Delaware county in a state of insurrection:

PROCLAMATION,

By SILAS WRIGHT, Governor of the State of New York.

By Proclamation, issued on the 27th day of August last, in conformity with the provisions of the 19th section of the act entitled "An act to enforce the laws and preserve order," passed April 15, 1845, the county of Delaware was declared to be in a state of insurrection, according to the provisions, and true intent and meaning of that act.

The reasons for that declaration, and the evidences upon which they rested, were given at length in the Proclamation.

It is now certified to me, by the principal civil authorities of the county, the same upon whose application I am required by the law to make the above declaration, that they hope and believe the insurrection recently prevailing in that county is effectually quelled. This certificate of the sheriff, district attorney, and judges of the county is concurred in by other prominent civil officers of the county, by the officer in command of the State troops in service there, and by several distinguished citizens of Delaware; all expressing this hope and belief, though not entirely free from apprehension.

Indulging strongly the hope, patriotically expressed by these individuals that what has transpired in that county will satisfy all that the laws must and will be executed; and also that a revocation of the proclamation, declaring the county in a state of insurrection, and a withdrawal of the military force in service there, may tend to allay irrita-

tion, and to restore sober reason and calm reflection to the minds of the excited portion of that population; I cheerfully avail myself of the occasion thus presented, to recall a declaration made under a sense of imperious public duty, to withdraw all the military force in the service of the State from the county of Delaware; and to leave that heretofore peaceful and patriotic county again to the natural love of order of its inhabitants, and to the fidelity and energy of its own civil authorities. If evil influences shall hereafter be carefully avoided, and bad counsels firmly resisted, by those who have once yielded to dangerous delusions, insurrection will not again make its appearance in this county; and time, forbearance, and good conduct, will soon wear out the deforming traces of that which has terminated.

In the earnest hope that the wisdom and patriotism of the people of that county will be unitedly and unremittingly exerted to secure to themselves, their families, and their cherished county, these most desirable results:

I do hereby, in conformity with the provisions of the same section of the law which directed it, revoke my proclamation of the 27th day of August last, declaring the county of Delaware to be in a state of insurrection, from and after Monday the 22d day of the present month, and declare that the same shall cease, and have no force or effect, from and after that day.

In testimony whereof, I have hereunto affixed the privy seal of the State. Witness my hand, at [L. S.] the city of Albany, this eighteenth day of December, in the year of our Lord one thousand eight hundred and forty-five.

SILAS WRIGHT.

By the Governor.

HORACE MOODY, Private Secretary.

REPORT ON ANTI-RENT TROUBLES.

The Assembly appointed a select committee on that part of the Governor's message relating to the anti-rent troubles, (*ante*, p. 240). On the 28th of March, the committee presented its report, which was signed by Samuel J. Tilden, chairman, Bishop Perkins, A. G. Chatfield, Clark S. Grinnell, Benjamin Baily and Reuben Lewis. Ira Harris dissented from that part of the report relating to the bill concerning tenures, but concurred in the remainder.

The following is the committee's report:

"That, impressed with the importance of the subject, as well from the number of persons and magnitude of interests affected as from its relations to the tranquillity and prosperity of the State, your committee have given it all the consideration allowed by their other duties in the period to which they felt confined by their desire for action upon it at the present session. Solicitous to learn from the numerous petitioners their grounds of complaint, and their views of remedies more fully than were exhibited in their memorials, your committee, meeting for this object with the committee of the Senate, heard for three days statements and explanations from delegates appointed for the purpose from the several counties. The proprietors of the manor of Rensselaerwyck also attended by counsel. Representatives of the tenants appeared from the counties of Albany, Rensselaer, Columbia, Schoharie, Schenectady, Montgomery, Greene, and Delaware.

From their statements, and from information derived from other sources, your committee are enabled to give a general view of the extent and location of the principal leasehold estates, the nature of their various tenures, as well as the evils complained of and the remedies desired.

The manor of Rensselaerwyck, it is well known, as claimed and possessed by its proprietors, comprised a tract of country extending twenty-four miles north and south and forty-eight miles east and west, lying on each side of

the Hudson river, and including nearly all of the counties of Albany and Rensselaer. Most of the lands in it are still held under perpetual leases, or, more correctly speaking, grants, executed generally from thirty-five to sixty years ago. It does not appear that any, except a few in the county of Rensselaer, for sixty years, which are now about to expire, are for a different term. Of those in the county of Albany, about one-half contain a reservation of the quarter sale, and the other half a year's rent extra upon each alienation; and, without particular information as to those in Rensselaer county, there is no reason to suppose that they much differ in this respect. The rent in the towns of Rensselaerville, Westerlo, Bern, and Knox, in the county of Albany, is generally about fourteen bushels of wheat, for an hundred acres, and four fat hens and one day's service with carriage and horses to each farm of one hundred and sixty acres. In the towns of Bethlehem, New Scotland, Guilderland, and Watervliet, which were earlier settled, it is generally ten bushels of wheat to an hundred acres, and four fat hens and one day's service to each farm, whatever be its size. The exact legal character of the instrument, and the nature of the other reservations, will appear by a blank form, of the kind generally used, which is hereto appended; other particulars in regard to the leases in the county of Albany, as well as the terms on which the landlord offers to sell out his interests, are shown by the statement of his agent, which is also annexed.

In the county of Columbia is the manor of Livingston, extending ten miles on the Hudson, fourteen on the east line, and twenty and a half east and west from the Hudson to Massachusetts, including Germantown, which was conveyed at a very early period. Upon how much of it the interests of the landlords have been extinguished, your committee were not definitely informed; but their impression is, that nowhere is the extinction of the leasehold tenures going on more rapidly. Of the leases now existing, it was

stated by the delegates that a few are in perpetuity, or for ninety-nine years; but the great mass are for lives — occasionally for one or three, but generally for two lives.

An original lease from Mary Livingston, executed January 1, 1825, was inspected by your committee. It is for two lives; reserves a rent of twenty-three bushels of wheat and four fat hens on one hundred and ninety-eight acres; and all waters and water privileges and minerals; covenants against alienation without consent of the lessor, and then for a tenth sale, to pay taxes, &c.

A second one, executed in 1818, differing very little from the first, except that the rent is sixteen dollars and four hens for ninety acres. One from Henry W. Livingston, executed April 16, 1797, very similar, except that it reserves a fifth sale, and sixteen bushels of wheat and four hens for one hundred and sixty acres. One from Robert Swift Livingston, executed February 16, 1837, for one life. In this the rent is twenty-six dollars for one hundred and fifty-two acres; it is covenanted that no alienation shall occur without consent, and then one-eighth of the proceeds shall be received by the lessor, and seven-eighths by the tenant. A form of the perpetual lease used by Henry W. Livingston, was also examined, and was found in no respect, except its term, different from the ordinary short lease.

An original lease was also inspected by your committee, granted by Robert Livingston, jun., in 1772, and assigned by endorsement in 1801; a copy of which is appended, as illustrating an important element of the popular antipathy to leasehold tenures in their traditional associations.

In this county, too, is the John I. Van Rensselaer tract, which was stated to be very large. An original lease, executed by him in 1791, is perpetual, and is very similar in form to the quarter-sale lease on the manor of Rensselaerwyck. The rent reserved in it is fifteen bushels of wheat, for ninety-one and one half acres.

In the county of Schoharie is Scott's patent, which was stated by the delegates to contain fifty or sixty thousand acres, including large parts of the towns of Broome, Conesville and Middleburg. It was granted to John Morin Scott and others; and is now owned by the heirs of John Livingston, some of whom, it was said, offer to sell at high prices, while the others will not sell at all. The leases are for two lives, reserving a rent of fourteen dollars on an hundred acres.

In this county also is the Blenheim patent, which, as was learned from another source, contained originally forty thousand acres. It was sold, on confiscation, in about 1779, to John Lansing, jr. Upon about one half of the tract, the interests of the landlords have been extinguished; and of the residue, seventeen thousand acres, owned by John A. King, are under leases in fee, reserving a rent of generally fifteen dollars on an hundred acres, and without other conditions except the covenants to pay the taxes and of distress and re-entry. There are a few instances of wheat rents, which are commuted at one dollar a bushel. The proprietor, it is stated, offers to sell his interests for a sum which, at six per cent, will produce the rent.

In the county of Schenectady is the Duanesburg tract, containing, as was stated by the delegates, about sixty thousand acres. It is mainly under perpetual leases, the oldest of which were executed fifty or sixty years ago, and which reserve a rent of fifteen dollars on an hundred acres, and mines and water privileges.

In the county of Montgomery is a part of the estate of George Clark, containing, as was stated by the delegates, twelve thousand and seven hundred acres, or one half of the patent granted in 1736 by Lieut. Gov. Clark to William Corry and others, and lying in the towns of Root, Charleston and Glen. The old leases were for three lives and not less than thirty-one years, and reserved, as was stated, a rent of twelve and a half dollars on a hundred acres, with

a reversion of all improvements. About one third have expired, and many of the others are held upon a single life. Renewals are offered at from thirty-seven to one hundred dollars on an hundred acres, for a specified long term, but subject every year to an endorsement of the consent of the landlord to their continuance, on his judgment that the conditions and covenants of the tenant have been fulfilled.

In the counties of Schoharie, Otsego, Herkimer, Oneida and Delaware, are tracts held from George Clark, of which your committee have no particular information, but which are believed to be generally for three lives, at a rent of six pence sterling per acre. Of that which lies in Stamford and Kortright, in Delaware county, it was stated that they are near expiration, and that, on renewal, forty cents per acre rent is required.

In the county of Greene, there remains some two thousand acres, under leases from the late Edward P. Livingston, some of which are in fee, and the others for three lives, and which reserve a rent of from sixteen to twenty bushels of wheat on a hundred acres.

And a tract of twenty-five thousand acres, about half of which is stated to be under leases in fee from the late James Desbrosses, at a rent of one shilling per acre, and of the other half of which definite information was not received.

In the county of Ulster is a tract of about seven thousand acres, owned by the heirs of Robert R. Livingston, and leased for three lives, at twenty bushels on an hundred acres.

In the county of Sullivan, there is a tract of about five thousand acres, owned by heirs of R. R. Livingston, under leases in fee and for three lives, and at a rent of from fifteen to twenty bushels on an hundred acres.

And a tract of about fifteen thousand acres under the Desbrosses lease.

In the county of Delaware is the Kortright patent, con-

taining about twenty thousand acres. Most of it is still held under leases in fee, at a rent of six pence sterling per acre. The proprietors offer to sell at two dollars per acre.

Of some portions of the Hardenburg patent more particular information has been received.

The Desbrosses tract, containing about sixty thousand acres, most of which is still under leases in fee, given between 1790 and 1807, and reserving a rent, after seven years, of one shilling per acre. The farms are usually from one to two hundred acres in size.

Of one tract of twenty thousand acres, about fifteen thousand are under perpetual leases from the late Morgan Lewis, at a rent of twenty bushels of wheat, after the first fifteen years, for five of which it was nothing, for five one half, and for five three quarters of that amount.

Three tracts of the late Gulian and Samuel Verplanck, containing originally fifty thousand acres, of which less than twenty thousand are now under leases. The rent on about one half is at fifteen bushels of wheat on an hundred acres, which is commuted at one dollar per bushel, and the rest at from fourteen to twenty dollars on an hundred acres. The latter has been offered for sale at $2.86 per acre; and a copy of a lease upon it is annexed.

Two tracts, of which about twenty thousand acres remain under lease from R. R. Livingston and Mrs. Montgomery. The leases are generally perpetual, reserving a wheat rent of twenty bushels on an hundred acres.

A tract of which about eight thousand acres are under lease from General Armstrong for three lives, at a rent of twenty bushels of wheat on an hundred acres.

The leases of Hunter and Overings, which cover extensive tracts of Delaware, Sullivan and Greene counties, are in fee, with a warrantee; reserving a rent of from twelve and a half to fifteen and occasionally eighteen cents an acre; and with only the usual covenants of re-entry and distress, and for the payment of taxes. In some of them,

the first seven years are free from rent; in others, the first five, the second five at half, and the third five at three quarters rent.

The leases of Goldsbrow Banyer, inspected by your committee, were, one for three lives and not less than thirty-one years, reserving forty bushels of wheat on one hundred and ninety-seven acres lying in Otsego county; and the other in fee, reserving thirty-four bushels on one hundred and seventy-one acres, lying in the north part of Rensselaer county.

The evils complained of by the petitioners, their grounds and nature have been so fully presented in documents already before you, that it is not thought necessary to repeat them further than to express the conclusions to which their consideration has led your committee, and which are applicable to the question, as one of public policy and legislative interposition.

Of the unfavorable influence of the leasehold tenures, upon the agricultural prosperity and the social condition of the communities where they exist, your committee entertain no doubt. Experience and observation — the gradually formed and thoroughly established convictions of those who are subject to them, and those who are free from them — of all who compare the effects of this system and the proprietary system in contiguous localities, and in farms intermingled side by side in the same locality, has settled the question, and, as your committee believe, has settled it in conformity with truth.

It has indeed been urged that the lengthened or perpetual credit allowed to the settler for the purchase money of his farm, with an exemption from interest or rent for a period of generally seven years, formed terms unusually favorable to him, conducing to his immediate prosperity and domestic comfort, amid the struggles and hardships incident to his condition, as well as securing the early occupation and cultivation of the lands. All this is no doubt true; but it

by no means follows that the ultimate and permanent effect of the credit — continued beyond the immediate benefits which it certainly did confer — was salutary. On the contrary, it is more than probable that this is another of the frequent instances in which a credit — convenient or useful at the time — becomes, in its remote and general effects, an injury.

Nor, if it could be shown that the rent was but a moderate interest on the market value of the wild lands, or even less than the rate at which the principal could be employed, would the conclusion be warranted that such a perpetual charge, universal in a community, is good; or that, upon the whole, anything was gained by accepting it in exchange for the unalleviated difficulties which ordinarily attend those who form a new settlement.

The mere idea of proprietorship is a valuable element of the individual and social character of the agricultural population of this country; inculcating habitual self respect and self-reliance; elevating the moral and mental dispositions, and enlarging the capacities for action; cultivating at once a manly sense of individual independence, and a generous subordination to the collective will. The diminished influence of this idea would naturally be the more felt in a community which saw itself, in this respect, an exception to all those by which it was surrounded; and where, too, the sense of dependence was made the more offensive, by traditional associations of degrading incidents, now removed, to a relation which still continued and seemed likely to be perpetual.

It may well be doubted, too, if an endless indebtedness, on the most favorable terms, is not a greater evil than the necessity of payment at any reasonable period. Industry and frugality are qualities not certain and invariable; and, under the stimulus of a desire to escape incumbrance and attain independence, they often enable individuals, after

all the sacrifices necessary to accomplish the object, to improve, in other respects, their condition.

In the present case, in addition to the restraints on alienation imposed in many of the leases, serious impediments have existed, to a free exchange of the lands, in the inconvenience and legal embarrassments which surround such transfers, and which tend to restrain labor from seeking, through shifting employments, its most advantageous application, and to repress the disposition, the habit, and the opportunities of enterprise.

The repugnance to this tenure, among those who are accustomed to the proprietary system, has not been without influence to keep the farms in the same hands, and to discourage the accession to these communities, of the more valuable classes of emigrants from the older States. Nor can it be questioned, that the inclination to make improvements is impaired, if the sense of ownership is not complete. And while the effect may be small, where the lease is perpetual, it increases as the permanency of the term diminishes, and where the lease is for lives or a long period of years, becomes incompatible with improvements of a permanent nature, and almost with successful husbandry. The principle applies, until we reach the case of leases from year to year, or for short terms, or, what much oftener occurs, letting out on shares; in which the tenant or farmer is not expected to make improvements, unless specially stipulated, and the owner exercises, personally, the care and faithful supervision which ownership alone can be relied upon to inspire. The relation existing, in such a case, is of a nature wholly different from that which we have been considering, and is more analogous to the management of an estate, by its proprietors, through hired agents or assistance; it does not exist extensively, and in its adaptation to the peculiar and temporary circumstances of the parties, no doubt exists beneficially; but it cannot, for obvious reasons, become general as a system of tenure.

The dissatisfaction which has arisen in the parts of the State where the leasehold tenures prevail, is traceable to the aversion common to our people to the system, and to special causes which concurred to inflame this sentiment into a deep, pervading and vehement excitement.

The late Stephen Van Rensselaer, while refusing to sell the lands, was generally remiss in the collection of his rents, and in particular instances from an unwillingness that the objects of his partiality should suffer inconvenience while he lived, permitted the arrears to remain and increase for a very long period; forgetting that such delay of payments — which perhaps could have been made gradually, but which, accumulating without the habit of providing for them at the time, became burdensome if not impossible — was if they were ultimately to be exacted, an indulgence fatal to the object of his mistaken kindness.

It is understood that these arrears amounted at the time of his decease to nearly four hundred thousand dollars, which he bequeathed in trust, to be collected and applied to the payment of his debts, but with authority to make remissions in cases of utter inability, poverty or misfortune, &c.; and that the debts so charged upon these arrears were of an almost equal amount.

After his death, disquietude was naturally felt lest collections should be enforced, attempts to induce payments were made, and much apprehension prevailed. The rents had been largely increased for several years before by the extremely high prices of wheat, which was no longer produced on the farms, and had to be commuted in money. Efforts to buy out the landlord were made, but the parties could not agree upon the terms; and the commissioners appointed by the State the year after to effect a compromise, reported the different propositions, which with their comments are appended.

The failure to effect an adjustment is, perhaps, to be ascribed, more than to the unreasonableness of the parties,

to the provisions of the will by which the remissions of the arrears did not come from the general estate, and the fact that the landlords were unfamiliar with the habits of thinking of the tenants and unaccustomed to the compromises which belong to business, while no counsel or agent acting for another could exercise the plenary discretion necessary to effect a settlement.

The dissatisfaction which thus arose allied itself with the general hostility to these tenures and with the popular sympathies, and spread over the whole region where such estates prevail. The deplorable excesses to which the excitement led, in some instances, need not be recounted, and will not, it is confidently believed, be repeated.

General and earnest attention is now drawn to the subject; and it is due as well to the number and character of the petitioners as to the importance of the questions in reference to the present interests and future policy of the State, that the matter should undergo a thorough investigation, and that any measures consistent with the rights of private parties and with constitutional limitations, should be adopted to remedy the evils complained of, and to obliterate relations which are inconsistent with sound public policy.

The measures prayed for in the petitions and proposed by the representatives of the tenants who appeared before your committee, are,

First. A taxation of the interests reserved in leases of long terms.

Secondly. An abolition of distress for rent.

Thirdly. A law enabling the tenant to dispute the title of the landlord under which he obtained and holds possession.

After a careful examination of the subject, your committee have come to the conclusion that leases in fee, for lives, and for long terms are, under the general principles of taxation adopted in this State, proper subjects of as-

sessment, and have amended the bill for that purpose which was referred to them.

Under our present laws, all debts incurred for the consideration of lands sold, whether resting in mere personal responsibility, or charged upon the lands, or both, are taxable as 'debts due from solvent debtors.' Mortgages, whether the land is the only security or there is also the personal security of a bond; and contracts for the sale of lands, with possession, but not title conveyed, whether or not the lands are the only guaranty for payment are instances of this kind. In the case of the mortgage, the legal title is held to be in the buyer; and in the case of the contract, is in the seller. In both cases the debt to the seller is taxable to him as personal property, even although the lands are also taxed — in the former case by operation of law, and in the latter by agreement between the parties — to the buyer.

A lease or grant of lands in perpetuity is, in substance, even if it were not, as it is, in legal classification, a form of sale; and there does not seem to be any reason why the consideration in this case should be exempt from the principle which applies in all other cases.

The instruments of this kind which your committee have examined are, in language and legal import, conveyances with the consideration money secured in them by provisions in the nature of a grant from the buyer of an annuity or rent charge. If, as in some instances, there is no clause expressly giving the remedy of distress, the rent is merely personal property; and even with such a clause, its nature is so much of personalty that the courts have not gone further than to deem it real estate for certain purposes. The transaction is more analogous to the case of a conveyance with a mortgage back for the consideration, than of a contract where the title has not passed.

It would be questionable whether the consideration-money secured upon lands with its interest payable as

rent, would not be fairly included in the general tax law, if the contrary intention of the Legislature had not been manifested in striking out the word ' rents,' from the enumeration of the particular subjects of taxation, in the original draft of it reported by Comptroller Savage. The revisers seem, in their note to the sections of the Revised Statutes which re-enacted the law of 1823, to intimate the opinion that rents are included.

In that note, the revisers suggest that in all cases of mortgages, contracts, or rents where the land is the only security, as the occupant is taxed for the full value of the land as if the title were absolute, if the debt secured in these various forms on the lands is also taxed to the other party as a ' debt due from a solvent debtor,' there will be ' double taxation.'

If it were possible to ascertain with certainty what debts are for consideration money and without other security than the lands sold, it would not follow that to tax the lands to one party and the debt charged upon it to the other, would be double taxation; for the occupant of the lands is entitled to deduct the debt so charged from the assessment of his personal property. It is only to the extent to which such a debt may exceed the amount of his personal property that any double taxation can occur.

And, in that case, the excessive taxation results, not from the taxation of the debt really held as personal property by the seller of the lands and justly taxable to him, but from the fact that the law does not permit debts to be deducted from the amount taxed as real estate to the buyer. It has been the settled policy of this State, for reasons which need not be now discussed, to allow debts to be deducted from the assessment of personal property, but not of real estate. In the single case in which a person taxed for real estate owes debts larger than his personal property, he is, to the extent of such excess, over-taxed. Whether this over taxation of the occupant is but one of those inequalities unavoidably incident to the operation of

a salutary general rule upon a peculiar and not very frequent case, or whether it is a defect which could be remedied without greater evil, is wholly immaterial as far as the other party is concerned. He actually has the debt in the form of a mortgage, contract, annuity or rent-charge, which is beyond any question a proper subject of taxation to him; and if it be conceded that one individual is, in some instances, taxed too much, that fact forms no reason why, in order that the aggregate of the taxes upon the two should be exactly the proper amount, another individual should be taxed so much less than his share; still less why a general rule of exempting him from just taxation, extending not merely to these peculiar circumstances but universally, should be adopted. On the contrary, as the total amount to be raised is the same however it be distributed, an exemption of one of these parties from his proper share of the taxation, increases the share falling upon the other, who is already over-taxed.

To illustrate the effect, supposing one-half of the inhabitants of a town were occupants of farms, worth each $10,000, and the other half held mortgages or securities of any kind upon these farms for $5,000 each, that both classes were without any other property, and that the amount of taxes to be raised were such as would, if the mortgages were not assessed, impose one per cent on the value of each farm. The parties are each of them worth the same amount, and ought to pay taxes equally, or $50 each. If the real estate is taxed according to our present rules, without deducting the debt upon it, and the mortgage is also taxed according to the present proposition, each occupant would pay $66, and each person holding a mortgage, $33. But if because the occupants are each taxed for $10,000, notwithstanding they owe $5,000, in order to accomplish an imaginary uniformity, the mortgage is exempted, the occupants will be taxed $100 each, and the holder of the mortgage nothing.

The theoretical propriety of not taxing the same prop-

erty twice may be attained, but a great practical inequality will be committed. The taxation of debts secured on lands, however it may in reference to excessive taxation of the occupants of the lands under some circumstances be called 'double taxation,' is really, in the language of the Comptroller, but 'an equitable distribution of a common burden among the several members of the community who ought to bear an equal portion of it,' or rather an approximation to such a distribution in which after all the party so taxed pays less than his just proportion.

The only real question is as to the intention of the parties to the contract in regard to the tax proposed. It may be assumed by one party that the design of the lessor or grantor was to reserve a rent on annuity free and clear of any tax; and that the lessee or grantee expected to pay taxes of any kind and in any manner laid upon the lands specifically. But it is not probable that either party distinctly contemplated such a tax as is now proposed to be laid, or intended anything more than to provide that the occupants of the lands should pay all the taxes which would fall upon the owner, and which an ordinary conveyance would transfer to the purchaser with the legal title, but which, in a contract for sale or a grant subject to a charge or rent, might not be transferred without express stipulation, or at least without embarrassing questions as to the actual charge. To include every peculiar form of such taxation upon the lands, the language of the instrument is general and comprehensive; but it does not necessarily include taxes which the sovereignty of the State may, in its good pleasure and sound discretion, lay upon that grantor as his just contribution towards the expense of government, even if it estimates among his property any source of revenue he may have, in the nature of a reservation or grant back in a lease, of a mortgage for consideration money, or of a contract for a conveyance, and which it chooses to adopt as the rule of apportioning the tax upon him.

If, then, these leases are, according to established rules, proper subjects of taxation, they ought not to be exempted, and especially as such legal preference tends to encourage investments which have been found so contrary to just public policy. Leases for lives and for terms deemed to be equal to a life, seem to fall so far within the reasons applying to leases in fee, as to be likewise subjected to assessment.

In imposing these taxes, it has been deemed proper to depart from the ordinary rule that personal taxes follow the person, and to lay the tax where the lands are situated. The ordinary rule has been established from its superior convenience, and from its general and substantial equity, as between the several localities affected. But when so important an exception exists, as of whole counties permanently indebted to non-residents, it seems proper that the rule should be adapted in this, as it has been in other instances, to the peculiar facts to which it must apply. And in all these conclusions, the consideration has been borne in mind, that the taxing power is one which may be, and has been exercised with liberal although just discretion, and that it is more wisely and rightfully exercised when it aims to apportion the burdens of government, not according to a fanciful uniformity, but according to substantial and practical equity.

Your committee have not learned that the remedy by distress is much employed on the leasehold estates; on the contrary, it appears, except upon one or two tracts, to be infrequently if ever resorted to. And yet upon general grounds of policy, they see no reason why it should not be abolished. It is regarded as an invidious distinction in favor of a particular class of creditors, which has survived similar remedies applicable to other debts. It is odious to those who are subject to it; sometimes operates unjustly towards other classes of creditors who are equally entitled to protection; and, since the enlargement of the exemption

from distress and execution, is not of much utility to the lessors in the cases in which it was formerly most frequently employed.

The argument for its retention is, that it enables the tenant more conveniently to secure a tenement, which is his first necessary; but, if, as is believed, he does not generally regard it as a benefit, but rather as an offensive discrimination, your committee do not deem this a case in which to overrule his judgment on an imaginary notion of advantage which the party interested disclaims.

As far as this remedy is in any case given or aided by statute, it is, if the contract to which it applies be not left without other substantive and adequate remedy, within the control of legislation; and if it still exists, after the assistance of law is withdrawn, by the mere force of express covenant, it will not be likely to be much resorted to, if indeed, it does not become wholly inoperative.

Assuming, for the purpose of this discussion, (erroneously, as your committee think), that the instruments existing in the cases which give rise to this controversy are ordinary leases, it is proper to consider the character and legal consequences of the bill, referred to your committee, entitled 'An act concerning tenures.'

A difference of opinion as to the true construction of the last clause of this bill exists among your committee. The opinion is entertained by the majority that it would, in effect, give the tenant an adverse possession, and, consequently, in cases where the tenancy has existed more than twenty-five years, a conclusive possession; but, as that is not the design of the bill, and if it had been in other respects approved, it would have been unanimously amended to remove any doubt as to its legal effect, that point is not deemed to require any comment. Aside from this, the material provision of the bill is that which withdraws from the lessor the effect of time in confirming his title under the general laws of this State. The act of February 26th,

1788, declared, that after January, 1800, the State would bring no action to recover real estate, unless its title had accrued within forty years before the commencement of the action, or it had enjoyed the rents or profits of the real estate within that period. It declared that, as between private persons, no action for the recovery of real estate or its possession should be maintained unless the right arose, in some cases within twenty-five years; and, in other cases, within twenty years before the commencement of the action. And it declared, in the formal and full technical language of the covenant for quiet enjoyment, that all persons claiming or having the real estate to which the act applied, should, 'at all times hereafter, quietly and freely, have, hold and enjoy, against the people of the State of New York,' 'all and singular the manors, tenements and hereditaments whatsoever,' so claimed or had. And that, as between individuals, every person who did not bring his suit within the time limited should be forever barred. The act of April 8, 1801, substantially re-enacted these provisions. The Revised Statutes, which took effect on January 1, 1830, simply shortened the limitations, both as against the State and in all cases against private persons, to twenty years; but being only prospective in their operation, they do not affect rights existing previous to their passage.

These statutes apply to all titles of real estate, whether the possession be in the person who holds the title or any other person, if, either by intendment of law or contract between the parties, that possession be under the title; and whether it be a case of mortgage, trust, grant, contract for a conveyance, or lease. In the case of the lease this principle, which had always existed in that as well as the other cases, was expressly declared by the section of the Revised Statutes, which applies the uniform limitation to the landlord where the occupancy of the tenant continues after the expiration of the tenancy.

Ought or can these statutes, after they have been applied prospectively, the time of limitation fixed has expired, and the titles even if originally bad become perfect and absolute, be repealed so as to act retrospectively, and to divest such titles?

Of the justice and wisdom of the statutes for quieting the titles to real estate there can be no question. They had their foundation, not like some of the other statutes of limitation, in public policy merely, but in natural justice. It is not just that a man should be compelled to prove his title, with legal strictness, after the lapse of many years, in which, while his rights were not questioned, the evidence of them has passed forever from his control.

Oral testimony becomes impossible when the transaction is half as remote as the origin of most of our land titles; and written testimony before our recent recording acts was often lost, and is still exposed to many casualties. Descents are frequently so obscured by time that many an individual cannot establish his inheritance from his great grandfather. Instruments of conveyance are often defective to execute the intention of the parties, especially after the facts which would explain them can no longer be known. If these "statutes of repose," as they have been aptly termed, were abrogated, and all titles in a country where exchanges of land are so frequent, were subjected to the consequences of every flaw which interested ingenuity could discover in any link of the chain, it may well be doubted whether many, except those derived directly from the State, could be sustained. Practically, these statutes are all which men usually rely upon for the original of their titles, and application of them is a main subject of investigation when titles are passed or controverted.

A principle on which so much of the real property of the people rests, should be legislated upon with great caution; can legislation upon it, in a particular class of cases and retrospectively, if it operate to annul established titles,

be vindicated as right or safe, or consistent with the constitution of the State, or the United States?

All our titles to lands are held under some law; is not a title which has become perfect and absolute under this law as valid, and as much to be protected as a title under any other law? The constitution of this State declares that 'private property shall not be taken for public use without just compensation.'[f] It has been much debated whether the word 'use' may be construed to mean 'policy, benefit, or utility;' and whether, on compensation to the owners lands which are held by a tenure deemed to be contrary to the public interest, might not be taken under the sovereign right of eminent domain, and afterwards sold to the occupants. If this power has, even by those who advocated its existence in such a case, been considered too 'doubtful and dangerous' to be exercised, how can the power be assumed to directly transfer from one set of persons to another these same lands, without the intervention of the sovereignty of the State, or the necessity of 'public use,' or the 'just compensation,' which are the conditions on which alone the power of eminent domain can be constitutionally exercised? Such would be the nature of a law which, although it might profess but to vary a rule of evidence, should operate retrospectively to divest a possession which had ripened into an absolute title; and such would be its effect, unless the lands, notwithstanding the divestment of one title, were still held by a different possessory or other title.

The Constitution of the United States says, that 'no State shall pass any law impairing the obligation of contracts.'[g] The Supreme Court has uniformly held that this prohibition applies not merely to executory contracts, but to conveyances of real estate between individuals and between a State and individuals; and that the law of a State

[f] Const. 1821, art. 7, § 7.

[g] U. S. Const. art. 1, § 10, clause 1.

which is in the nature of a grant of confirmation of title cannot be constitutionally repealed. Would not that court regard a law defining in advance the nature of a possessory title, and confirming it to those who should acquire it forever against the State and against individuals, as falling within the same principle, so far at least that an absolute title which had grown up under its provisions, could not by its repeal be divested? And, if it did not so regard such a law in all cases, would it not, where the lands confirmed to the persons holding the title to which the law applied had previously escheated to the State, and the law is, not only in the nature of a grant, but departing from the usual words and form of an act, employs the technical expressions of a conveyance?

Passing these questions with a mere suggestion of the difficulties which they present, a still graver and more important one arises.

The covenants in the leases are executory contracts, and beyond all doubt within the protection of the clause referred to of the Constitution of the United States.

The bill under consideration declares that 'in any action brought to recover the possession of land for the non-performance of any condition contained in the grant or lease,' 'the plaintiff shall be required, before he shall be entitled to recover in such action, to establish the validity of the title' under which he claims to hold, 'at the time of the execution of the grant or lease.'

It is understood that the power to impose this condition is claimed under the control which the Legislature is supposed to have over the remedies and evidence applying to contracts.

That the Legislature may constitutionally modify the forms of the remedies by which contracts are enforced, and the rules of evidence by which they are supported, is conceded. The precise extent to which it may go is not easily to be defined by a general rule, and has been a frequent subject of discussion, and in particular cases of difference

of opinion, in the Supreme Court of the United States. But it has been settled, and is uniformly declared in that high tribunal, that the modification of the remedy and the evidence of a contract which is within the constitutional power of a Legislature, must not be inconsistent with the nature or express agreements of that contract, or have the effect to defeat the contract. The Legislature can no more withdraw all remedy to enforce or evidence to support a contract, or, under pretence of modifying the remedy or evidence, do this, in substance and effect, than it can in direct terms annul the contract.

In the case of Green v. Biddle, 8 Wheat. 1, Justice Story in delivering the unanimous opinion of the court said, 'It is no answer that the acts of Kentucky now in question are regulations of the remedy, and not of the right in the lands. If these acts so changed the nature or extent of existing remedies as materially to impair the rights or interests of the owner, they are just as much a violation of the compact as if they directly overturned his rights and interests.'

And on the re-argument of the same case, Justice Washington said: 'If there be no remedy to recover the possession, the law necessarily presumes a want of right to it. If the remedy afforded be qualified and restrained by conditions of any kind, the right of the owner may indeed subsist, but it is impaired and rendered insecure, according to the nature and extent of such restrictions.'

In the recent case of Bronson vs. Kinzie et al., 17 Pet. 28, the question was as to the validity of a law of the State of Illinois, which provided that on a sale of lands under a mortgage, they should not be struck off unless to a bid of two-thirds of their value, as ascertained by an appraisement.

Chief Justice Taney, in delivering the judgment of the court that the law was unconstitutional and void as impairing the obligation of the contract, said:

'Whatever belongs merely to the remedy may be altered according to the will of the State, provided the alteration

does not impair the obligation of the contract. But if that effect is produced, it is immaterial whether it is done by acting on the remedy or directly on the contract itself. In either case it is prohibited by the constitution.[h] It is difficult, perhaps, to draw a line that would be applicable in all cases between legitimate alterations of the remedy and provisions which, in the form of remedy, impair the right. But it is manifest that the obligation of the contract, and the rights of a party under it, may, in effect, be destroyed by denying a remedy altogether; or may be seriously impaired by burdening the proceedings with new conditions and restrictions, so as to make the remedy hardly worth pursuing. And no one, we presume, would say that there is any substantial difference between a retrospective law, declaring a particular contract or class of contracts to be abrogated and void, and one which took away all remedy to enforce them, or encumbered it with conditions that rendered it useless or impracticable to pursue it.'

The legislation proposed in the bill before us is very analogous to the law of Illinois, except that it is more extreme and indefensible. It does not seem, in a just sense, to pertain either to the remedy or the evidence, but to act directly upon the contract, to alter its terms by imposing a new condition to the covenants of one of the parties. The contracts are similar. In the Illinois case, to pay interest and principal of the purchase money, and in the present case, to pay rent for the purchase money; and in both cases a right of re-entry is given as security.

In the Illinois case the law was intended to make the remedy less severe, by providing that the lands should be sold only at two-thirds their valuation, but as it had, or might have, the effect of defeating the remedy altogether, it was declared void.

In the case before us, the law is intended to reach a question as to the supposed original equities between the par-

[h] U. S. Const. art. 1, § 10, clause 1.

ties at the formation of the contract. It denies the remedy altogether, except on a condition which has no relation to the nature or operation of the remedy, or the validity of the contract, or even, necessarily, to the equities then or now existing between the parties.

It says that if the party entitled by the express words of the contract to the remedy, cannot now establish affirmatively his title at the time the grant was executed, he shall not have the remedy. If he had a good title then, but, in the lapse of thirty or sixty years, has lost the evidence of it; if, as is frequently done, he conveyed a doubtful or defective title, with a warranty, and that title has since become absolute, either by the statute of limitations or by his purchase of hostile claims, which by operation of law enure to the benefit of his grantee, he shall not have the remedy. Even if no injury or injustice has been done to the other party, if he has been protected from risk by an effectual warranty, if there was no fraud originally, and now by the effect of our quieting statutes, no question can arise as to the rights conveyed, still the arbitrary and inflexible condition is interposed to withdraw the remedy, and, in effect, abrogate the contract.

This discussion of the bill proposed has been deemed necessary, because its real character and effect seems to be so little understood. It applies not only to the estates in regard to which the difficulties exist and those of similar character, but to leases and grants for any terms exceeding ten years, including a vast amount of property in our cities; and is offered as a measure of general legislation.

Your committee have no reason to think that, if it were passed and were valid, and should go into effect, it would afford any relief to the petitioners, or in any measure accomplish the important object of public policy in extinguishing the leasehold tenures. Nor do they entertain the slightest doubt that, if it were enacted, it would be held by the Supreme Court of the United States to be unconstitu-

tional and void; would create expensive litigation, which, even if it could be successful would not be likely to effect any good for the tenants or the public, but which could not be successful; would divert attention from other and more practical remedies and from all effectual measures, by legislation, or by compromise, of terminating a relation which has been so fruitful of mischief.

The question presented by some of the tenants is a very different one from that involved in the bill before us. That they should have, in a general and popular sense, the right to try the titles of the landlords in the courts, seems to them but equitable. The exact sense attached to this current phrase it is not easy to ascertain; and probably it is very different with different individuals. As far as the committee could learn they do not contemplate anything further than a removal of the estoppel, which, under existing rules of evidence, is the legal effect of the lease, restraining the tenant, in any action between him and the landlord, from raising the question of the validity of the landlord's title. A bill, in conformity with this idea, has been introduced into the Senate, which allows the tenant, in such a case, to set up a different title against the landlord. This is understood to impose the burden of proof on the tenant; but whether it does so or requires the landlord to show his title in the first instance, your committee do not see that the measure could, in any respect, practically benefit the tenant. In the latter case even, the landlord would merely have to prove his claim of title, which he could do by the lease, and then prove an occupancy under that claim, either by himself or through some other person shown to have held under that claim, for twenty-five years, and his title would be established against the world. This, it seems to be conceded, could uniformly be done in the cases to which the act would apply.

The covenant of the tenant to pay rent, where he remained in undisturbed possession and the warranty of that possession was not violated, could not be defeated.

If it be true that in any case the title of the landlord is not good, the real title, in the absence of any private claimant, is in the State; and the State is not only the rightful owner, but is in a much more advantageous situation to enforce its right to the possession than a private claimant can be.

It is an error to suppose that the tenants can have acquired a title by adverse possession. The very idea of an adverse possession is of a possession claimed to be in the occupant's own right, and adverse to every other right. That claim must be evidenced by words or acts; it must be continuous during the whole period of possession required. A submission to another title destroys its character and effect. These tenants, it is conceded, have never been in possession except under an admission, verbal or written, that the possession was not in their own right as proprietors, but as tenants in the right of others.

Nor is there any foundation for the idea that the State is bound by the statute of limitations against itself, but not by the effect of that statute as between individuals. It can no more destroy rights that have under that law vested against private parties than rights which have vested against itself. If it has lost lands which had escheated to it, by the operation of its own declaration that, after a certain defined period and a certain defined possession, it would not assert its right to these lands, the party entitled to them under that law, holds them as if by a formal grant. The State can no more change the effect of the law so as to transfer the lands to another person than it can change that effect so as to recover the lands to itself. The principle is well settled that the State has not the constitutional power to resume a grant of lands which it has made; who ever dreamed that it could transfer the lands to a different person from him to whom they were originally granted?

Standing as the State does on the same ground as an individual, in respect to the binding validity of these statutes,

it has, in another respect, a manifest and great advantage over individuals. The limitation applying to it is forty years, instead of twenty or twenty-five years as between individuals. In any action between the tenant and the landlord, the question will be confined by the operation of laws which cannot be constitutionally repealed in their retrospective effects, to the present title; while in an action between the State and the landlord, the question may go back to any time within forty years; and if the first lease has been in existence less than that period, may reach, as the bill 'concerning tenures' ineffectually proposes to do, the original title, although the decision could not affect cases where the lease had been of longer duration.

It is made, by the Revised Statutes, the duty of the Attorney General whenever he shall be informed or have reason to suspect that the State has a title to any land, by escheat, to institute proceedings for their recovery; and it is perfectly competent for the Legislature, by resolution, to instruct that officer to bring an action in any case which may in its judgment warrant such a course, and to allow persons having any equitable interests in the lands to associate with him their own counsel; or to provide by general law for any class of cases which may require such legislative interposition.

Your committee have felt that it was due to the importance of this question, as well as to the number and character of the petitioners, to candidly consider all the aspects in which it has been presented. The discussion may not, however, be strictly applicable to the point actually involved. Your committee have already adverted to the misapprehensions which exist as to the real nature of most of the instruments under which the lands in question are held. It is well settled, in legal classification, that an instrument which conveys the whole quantity of the grantor's estate is not properly a lease. That estate in these cases is a fee; and of the instruments examined by your committee,

or ascertained to exist, five-sixths are grants in perpetuity — conveyances of the fee. Of most of those the Van Rensselaer lease is a specimen. Its operative words are not those usual or appropriate to a lease — 'lease demise and to farm let;' but those of several different forms of conveyance — 'grant,' 'bargain and sell,' 'remise and release' and 'confirm;' 'to have and to hold' the farm, 'to the only proper use of the said party of the second part, his heirs and assigns, forever.' It contains also, on the part of the grantor the usual covenants of quiet enjoyment and warrantee. It is, in a word, a warrantee deed. The fee of the land is conveyed to the person who is called the tenant, but who in truth is the owner. The reservations, conditions and covenants are in the nature of a grant by the buyer to the seller, of an annuity secured on the land, or mortgage for the purchase money. The relations of the parties are the same as in such a case, except that the remedies for violation of the covenants have some not very important peculiarities. The title is in the person called the tenant, who is the owner of the land, in contemplation of law, and in fact, just as much as any man is of his farm who owes a mortgage or judgment. Mr. Van Rensselaer has no title; he has conveyed it to the tenant; nobody but the tenant has any title. It was originally warranted to him by the person from whom he received it; and it is now good against the world.

There is, it is true, an incumbrance upon his farm, and in a very objectionable form, because it is perpetual; and he has made some stipulations called reservations, which are not convenient to him, or consonant with the public interest. The Legislature has no power, instantly to annul or change the contract. If it should attempt to do so, it would itself be overruled; and would but delude and betray the unfortunate man who trusted to it; overwhelm him with expensive litigation and certain defeat.

But it should adopt any measures within its constitu-

tional power to remove discriminations against him, as compared with other debtors; and it should, from considerations of public policy and public duty, prohibit these peculiar relations which have proved so undesirable, for the future, and do what it can, rightfully and justly, to terminate those which now exist.

Your committee have examined the subject with a sincere and anxious desire for the accomplishment of this object. They have matured a bill for your consideration.

It prohibits for the future leases of agricultural lands for a period exceeding ten years; and proposes, by the exercise of the unquestionable power of the Legislature over the statutes of devises and descents, to provide, at a future and not very distant period, for the commutation on equitable principles, in chancery, of the rights and interests of the landlords, and the conversion of them into mortgages, payable at once or in reasonable instalments.

The bill, it is believed, is free from constitutional objections. It acts prospectively, and disturbs no rights which have vested. It merely attaches a condition to the future devise and descent of a certain species of property; and acts upon them far less than our previous legislation has frequently done. By the diminution of the control over property after death, from a period equal to any number of lives in being and twenty-one years to a period equal to two lives in being and twenty-one years, and by the abolition of passive trusts, the Revised Statutes made more violent changes in the previous laws of devise, and unsettled the disposition of a vastly larger amount of property than the present bill proposes to affect in a much less degree. They also altered the course of descents wherever it seemed expedient; in some instances taking away, and in others conferring the descent; although comprehensive changes were not required after the statute of 1786, abolishing entails and primogeniture, and establishing our present rules of succession. An excessive suspension of

the power to alienate lands, which restrained any one man from having their complete control, and prevented the full development of their resources, was the principal evil designed to be remedied by these great changes. It exists practically, though not theoretically, in the present case, accompanied by peculiar and greater social evils; it suggests the nature of the remedy, and justifies the application of it which is proposed, and which is much less extensive than on those former occasions. The constitutional power of the Legislature over these statutes, which has been thus exercised, is not limited by the narrow boundaries which confine it in acting upon statutes prescribing the remedies and evidence applicable to existing contracts.

The provisions of the bill have been framed to operate without harshness on private interests; and to make the proceeding so cheap as to be at the command of any man who may desire to avail himself of its benefits. For the ascertainment of the value of the interests and rights of the landlords, rules are prescribed which seem to be just and equitable. The present value of the reservations is to be a principal sum, which at the legal rate shall produce an interest equal to the annual rent. The idea has been entertained that, inasmuch as large sums of money cannot be safely and conveniently invested to produce the legal rate of interest, a less rate should be assumed by which to calculate the value of the reservations; but, if allowance be made for the expenses of collections, agencies and other incidents of these investments, their income would not exceed, if it would equal the income of an investment of the amount at which they will be estimated in securities which would on the whole be generally preferred.

The legal validity of any reservation may be questioned and determined, and none which is not valid is to be estimated. The reservations of quarter and other proportional sales and charges upon alienation are not believed to be valid by the existing laws of this State. Under the feudal system, the tenant in fee simple could not alien his lands

without a license from the lord, and if he did so the lands were forfeited. A custom arose of commuting this forfeiture or giving the license on payment of a fixed sum, the acceptance of which at length became obligatory upon the lord, and which was called a fine on alienation. The growing disposition of the tenants to possess the right to alien, and the inconvenience to the lords from their right to establish sub-tenancies concurred to produce the statute *quia emptores* (18 Edw. 1, chap. 1); which declared that thereafter it should be lawful for every freeman owning a fee to alien it at his pleasure, but provided that the assignee should hold not of him but directly of the superior lord.

The construction of this statute, adopted by the common law authorities (Co. Lit. sec. 360, note to 223a and to 43 a and b. Sullivan, 12 Lec. p. 118, Gilb. Ten. 135, Wright, Ten. 153), was that it took away in all the cases to which it applied, not only the right to restrain alienation without consent, but also the right to establish a fine for consent; and it was held that a condition for either purpose in a grant in fee is void, from repugnancy to the nature of the estate conveyed as defined in this statute. But the act did not apply to the King, and it was questioned whether the tenants who held directly from him were not still liable to the forfeiture; until at length a statute was passed that he should not exact that penalty, but should accept a reasonable fine to be ascertained in chancery; which was there fixed at one-third of the yearly value of the lands if consent was previously obtained, but if not at once their yearly value. (Co. Inst. 67, 2 Bl. Com. 72.) It was in this form and as existing only in this case, that fines on alienations were principally known in English law; and their existence as between the lords and their tenants before the statute of *quia emptores,* does not seem to be recognized by Blackstone, and appears to be rather a matter of antiquarian research. The statute of 12 Chas. II abolished the feudal system and its incidents, among which were expressly enumerated fines on alienation.

Our statute of 1787, "concerning tenures," substantially re-enacted the statutes *quia emptores* and of 12 Charles II., and expressly the parts of them which affect this question, and which had received this settled construction, through a long period, in England. Aside from the objection of repugnancy, if a condition in a grant in fee, imposing a charge or fine on each alienation, can, in this state of the law, be sustained, it is difficult to imagine how any condition could be held void as contrary to public policy. The words, the occasion, and the history of the act of 1787 show that its design was to prevent the existence, in this State, of the tenures and incidents which the acts it copied had abolished in England. It was enacted, as the revisers of 1830 suggest, not because it was necessary, but for 'abundant caution;' and, even if it does not operate as an express prohibition, it would seem, from its nature and object, to constitute, if any statute ever did, an authoritative declaration of public policy, the principles of which no private contract could be allowed to contravene. A general condition in a conveyance in fee, not to alien, is settled, in this State, to be void, as contrary to public policy. (4 Kent, 131.) The rule by which it is so held, was first established in England by the statutes which have been thus re-enacted in this State. The reason of those statutes, and their uniform construction in that country, is no less inconsistent with a charge in the nature of a fine on alienation, than with a positive restraint on alienation. Nor has any exception been established, there or here, in favor of such conditions in grants, reserving rents or services, with a possibility of reverter. On the contrary, it was to exactly such cases that the statutes originally applied; nor is the evil or inconsistency with public policy any less in those cases. It should be observed, too, that the relation between the lord and tenant was created by contract, express or implied; and the consent of the tenant to the condition in the grant, was as much given, as it can be now by the stipulation of such a condition in a grant.

It seems to be supposed that the courts of this State have held such conditions to be valid; but an examination of the cases show, that they have not gone farther than to determine, in two instances, that a condition in a lease in fee, to give a pre-emption to the lessor on any subsequent alienation is legal; while the analogies of all similar questions are against the validity of conditions for proportional sales. In Jackson, &c. v. Silvernail, (15 John. 277) one of the questions was, whether, in a lease for two lives, a subletting of part of the farm, and a sale of it all under execution, were violations of a condition not to alien without written permission; and, without discussing the validity of the condition itself, which is conceded by the same judge, in the next case, to be void, the court held that it had not been violated. Jackson, &c. v. Schultz, (18 John. 174) was the case of an instrument, with the operative words of a lease in fee, with conditions not to sell without written permission — for a pre-emption — and for the payment of a tenth of the proceeds of the sale; all of which were violated. Justice Platt delivered the judgment; and in his opinion held that the two conditions for pre-emption and tenth sale were valid. He construed the statute of 1787 as merely reversing the feudal rule establishing forfeitures and fines, and making the right of alienation incident to a grant in fee, unless that right was qualified by express stipulation, which, he said, the parties might lawfully do; but he made no distinction between leases in fee and other grants in fee; and applied his construction to both equally; which, in the latter case, is inconsistent with all the other authorities. If his *dictum* that the consent of the grantee can make such a condition valid is right, in its application to all grants in fee, then the whole current of English and American adjudications on the point, for five centuries, is wrong; and, not only in regard to this condition, but all similar ones in conveyances and devises, which have, upon the same grounds, been uniformly decided to be void.

Chief Justice Spencer ' concurred in the result of the opinion,' that the plaintiff was entitled to judgment, on the ground that the condition for the pre-emption was lawful; but ' on the other parts of the case it was not necessary, nor did he mean to express any opinion.' In Jackson, &c., v. Groat, (7 Cow. 285) the question was, whether the conditions extended to a second transfer. The court decided that they did; and incidentally referred to the two former cases, as establishing the validity of the conditions for pre-emption and for a tenth sale. This was a case of a lease for two lives; it did not necessarily involve the validity of the tenth sale, which had not been settled, even in a lease for lives, by the two cases on which it proceeded; and it cannot be regarded as a decision on that question, or as extending, in that respect, the authority of the case of Jackson v. Shultz. Livingston v. Stickels, (8 Paige, 398), was a case of a lease for two lives, with a condition for a tenth sale on each alienation; and on an appeal from a decree of a vice-chancellor, enforcing the payment of the tenth sale. Chancellor Walworth, although assuming that such a condition in restraint of the alienation of leasehold property, might be sustained at law, reversed the decree. ' I prefer,' said he, ' to put my decision in this case, on the express ground that these agreements, in the nature of fines upon alienations, are inconsistent with the spirit of our free institutions, and injurious to the community. And although this court has no right to interfere with such contracts, so far as the laws of the State sanction their validity, it ought not to interpose its extraordinary jurisdiction, to enforce the rights of the landlord, in cases where he has not, by his contract, secured to himself a legal right, as contradistinguished from an equitable claim, to enforce a hard bargain, for which the law gives him no right of action.'

It seems to your committee that, if, as they think, the bill proposed is within the constitutional power of the

Legislature, there is no more objection to its principle than there would be to the enactment of the present law of partition, if it did not now exist, as applicable to future heirs and devisees. The provisions of the bill, while they must be adapted to the peculiarities of the case, are intended to be equitable between the parties; and should, at all events, be made so; but there seems to be no reason why the relation between these parties — which differs essentially from that of the parties to an ordinary contract, and is more analogous to a case of joint interests in lands — should not be dissolved on equitable terms and by the courts; while there are strong considerations of public interest and public policy which require that, if it can, it should be done.

The adoption of the measures recommended by your committee will, it is believed, produce a gradual and rapid extinction of the leasehold tenures, without injustice to any person; perhaps, within a period not much longer than the convenience of the parties might dictate; and will, at all events, accomplish the important object of public policy in the extinction of these relations in their most objectionable feature, which is that they are perpetual."

JOHN YOUNG, Governor.

The year 1847 marks the transition from the Second Constitution to the Third Constitution. A Constitutional Convention was held in 1846, and proposed a new Constitution, which was submitted to the people and approved at the general election in November, 1846. The new Constitution took effect for the most part on the 1st day of January, 1847. Judges of the new Court of Appeals, justices of the Supreme Court, and county judges were to be chosen during the spring of 1847, and enter on the duties of their office on the first Monday of July following. The Chancellor and judges of the existing Supreme Court were authorized to hear and determine pending business, but all their powers were to cease on the 1st of July, 1848.

By the new Constitution Senators were for the first time to be chosen by single districts, and the first election of Senators and Members of Assembly was to be held at the general election in 1847. The first election of Governor under the new Constitution was to be held at the general election in 1848.

Governor Young was elected under the Second Constitution at the general election in November, 1846, and assumed the duties of his office on the 1st of January, 1847. The Legislature of 1847 was chosen under the Second Constitution. The Legislature of 1848 was the first Legislature chosen under the Third Constitution.

On the 5th of January, 1847, Governor Young sent to the Legislature his first

ANNUAL MESSAGE:

Fellow Citizens.— The Constitution under which you are assembled, provides that the Governor " shall communicate by message to the Legislature at every session, the

condition of the State, and recommend such matters to them as he shall judge expedient;" and I am most happy that I am permitted to make my first communication to you at a period so interesting in the history of the State.

The recent changes in the frame work of our government, impose new and important duties upon the Legislature.

It is but reasonable to expect that you will find defects in the present Constitution. I freely admit that it contains some affirmative provisions to which I could not have given my assent had they been separately submitted to the people; but most of its great leading features breathe the spirit of the age, and command not only the assent but the admiration of a vast majority of the electors of the State.

Under our former Constitution our elections were embittered, and not unfrequently perverted, by the consideration, that upon the election of one officer often depended the political advancement of thousands. This evil is greatly mitigated; indeed, it can scarcely be said to exist, under the present Constitution.

The people, by reserving the power of choosing, directly, their own officers, so far as it was believed to be practicable, and by providing for elections in most instances in small and convenient districts, so that the character and qualifications of candidates for office may be fully known and appreciated by the electors, have left little undone that is necessary to render our elections a fair expression of the will of the electors.

Some apprehension has been felt and expressed by wise and pure men, in regard to the election of judicial officers; but I feel the most confident assurance that the experience of a few years will remove all such apprehensions.

Any appointing power, other than the people, may be either corrupted or subjected, unconsciously, to interested and pernicious influences. Not so with the people. If they err to-day, they will correct the error to-morrow.

Such legislation as may be necessary to organize the Judiciary, will claim, at your hands, early consideration.

John Young

The Court for the Correction of Errors ceased to exist at the close of the last year, and the new Court of Appeals, cannot be organized until the first of July next. During this interval, there will be no tribunal to review the decisions of the Supreme Court and the Court of Chancery; but it is doubtless within the competency of the Legislature to provide for the review of such decisions by the Court of Appeals, after it shall be constituted.[1]

As the election of the Judiciary is to occur between the first day of April and the first day of July, early legislative action, dividing the State into districts, and providing, in every respect, for this most important election, seems to be imperatively demanded.[2]

This election, I think, should be held as early as practicable. By fixing upon an early day in April, the convenience of the electors will probably be best consulted, and time will be given to those who may be elected to the office of Judge, to prepare for the discharge of their new and highly responsible duties.

The enactments necessary to the organization of the Judiciary, must require great labor and care; and the success of the system may depend very much upon the wisdom of your legislation in this regard.[3]

[1] The Governor's suggestion as to review of decisions in the Supreme Court between the abolition of the court for the correction of errors and the organization of the new court of appeals, was embodied in chapter 280, passed May 12, which vested in the new court the power of review in these cases.

[2] Eight judicial districts were erected by chapter 241, passed May 8, and the election of judicial officers was provided for by chapter 276, passed May 12.

[3] A general judiciary act, chapter 280, was passed May 12, and was amended by chapter 470, passed December 14, at the second meeting.

Parts of chapter 280 were sustained as follows: Section 6, court of appeals, quorum, Oakley v. Aspinwall (1850), 3 N. Y. 547; sec. 16, supreme court, powers of judges, *Re* Hathaway (1877), 71 N. Y. 238; sec. 27, county judges, powers of, People v. Hurlbutt (1865), 44 Barb. 126; sec. 30, jurisdiction of county court, Beecher v. Allen (1849), 5 Barb. 169; Frees v. Ford (1852), 6 N. Y. 176. But see *contra*, Griswold v. Sheldon (1851), 4 N. Y. 581; Kundolf v. Thalheimer (1855), 12 N. Y. 593.

Chapter 470 was held unconstitutional in McKoan v. Devries (1848), 3 Barb. 196; Bullard v. Van Tassel (1848), 3 How. Pr. 402.

By the 24th section of the 6th article of the Constitution, you are required to "provide for the appointment of three Commissioners, whose duty it shall be to revise, reform, simplify and abridge the rules and practice, pleadings, forms and proceedings of the Courts of Record of this State, and to report thereon to the Legislature, subject to their adoption and modification, from time to time.

If we except such laws as must relate to the election of judges, nearly the entire legislation necessary to carry into effect the provisions of the Constitution in respect to the Judiciary, is within the scope of the authority of this commission; and while its action will be merely advisory to the Legislature, its early creation, composed, as it doubtless will be, of able, industrious and energetic men, must exert a favorable influence upon this branch of legislation, and relieve you from much labor. This recommendation, however, does not go upon the assumption that the Commissioners thus to be appointed, will be men of superior ability to the members of either branch of the Legislature. It rests upon the fact that the commission will consist of three and only three men, who will be devoted to the consideration of a single subject.[4]

The 3d section of the 6th article of the Constitution, declares that there shall be a Supreme Court having general jurisdiction in law and equity. Practically, however, this Supreme Court may be regarded as consisting of eight courts of concurrent jurisdiction. These courts are capable, respectively, of making final orders and decrees, subject to be reviewed only by the Court of Appeals.

It is a dictate of common sense, and is verified by the experience or observation of almost every man, that the

[4] By chapter 59, passed April 8, Arphaxed Loomis, Nicholas Hill, Jr., and David Graham were appointed commissioners on practice and pleadings under section 24 of article 6 of the Constitution. On the 20th of September, 1847, Mr. Hill resigned, and by a concurrent resolution adopted by the Senate on the 29th of September, and by the Assembly on the 30th, David Dudley Field was appointed to fill the vacancy.

union of common law and equity jurisdiction in the same person, tends to great embarrassment and delay, and seems to preclude the acquisition of that knowledge in either of the sciences, necessary to constitute a good judge. I therefore respectfully recommend to your consideration the inquiry, whether these jurisdictions may not, in practice, be in a good degree separated.

The Constitution provides that "the testimony in equity cases shall be taken in like manner as in cases at law."[a]

At law, the testimony is taken by the circuit judge at the circuit, who decides all questions arising in the progress of the trial, and the verdict of the jury or the decision of the judge, under the present Constitution, without the intervention of a jury, is conclusive upon the parties, unless an appeal shall be taken to the court in bench.

In equity then a single judge is to take the testimony; and did not the framers of the Constitution intend that the judge who should take the testimony and have the advantage of seeing and hearing the witnesses, should decide the cause, subject, of course, to be reviewed on appeal to the four judges? In this connection allow me to call your attention to section five of the sixth article of the Constitution, which is in the following words: "The Legislature shall have the same powers to alter and amend the jurisdiction and proceedings in law and equity that they have heretofore possessed."

The Legislature have heretofore exercised the power of creating Vice-Chancellors and Assistant Vice-Chancellors, and of conferring upon them, and upon circuit judges, the authority to make final decrees in cases in equity.

If you possess the authority, I recommend to you to provide, by law, that the judges in each district shall designate one of their number who shall hold special terms in equity in each county in the district, and hear and decide all causes ready for hearing therein, with power to summon juries

[a] Const. 1846, art. 6, § 10.

to try issues ordered to be tried by jury, leaving to the other three judges the discharge of most of the duties arising at common law.[5]

The power to fix the compensation of the justices of the Court of Appeals and of the Supreme Court, has been left by the Convention to you.

The wise exercise of this power is, in my judgment, so important to the success and character of the Judiciary, that I cannot omit to recommend that provision be made for just and remunerative compensation to these officers. A justice of one of these Courts must withdraw from all other business transactions, and devote himself, exclusively, to the duties of the place. This is demanded not only by the labor to be performed, but by the sacred character of the office. It will not be forgotten that these are elections for the short term of eight years, when the Judge leaves the bench to form, or attempt to form, new business connections. In this he will rarely be successful. The passes from the bench to any other business, are exceedingly difficult.

With small salaries, persons may be found to occupy the benches of judges, but they will either be persons without business and without the capacity to transact business, or men whose pecuniary condition is such that they will be wholly regardless of compensation.

Our character as a State is in nothing more involved than in the character of our Judiciary. The people of the State are too generous not to desire to see their judges fairly compensated, and I have very little apprehension that their representatives will disregard their wishes. It has occurred to me that a tax of one dollar upon each suit

[5] The Governor's suggestion as to a division of powers in relation to suits at law and proceedings in equity, was not adopted, but the union of law and equity jurisdiction in the supreme court, as declared by article 6, section 3 of the Constitution, was consummated by the judiciary act, under which the same judge at the same term could exercise both legal and equitable jurisdiction. See chap. 280, §§ 16, 20.

brought in the Supreme court, to be paid into the Treasury, and applied to the payment in whole, or in part, of the judges of that court, might not be inappropriate.[6]

In 1836, the Legislature authorized the construction of the Genesee Valley and Black River canals, and the State at once entered upon the work. Many of our citizens, as the labor of construction progressed, regarding the policy of the State as settled in respect to these improvements, changed their business transactions, and made investments, depending entirely for success upon the completion of these works, and I respectfully submit that good faith forbids their abandonment. How far the State would derive revenue from these canals, if completed, both direct and indirect, is a matter that cannot be discussed within the limits that I have prescribed for this communication.

It is, however, a proper subject for legislative deliberation; but I think its action should not be controlled by considerations relating to revenue alone, particularly as applicable to works in part constructed, and where the expenditure, as in this case, has already been large; more especially, if you add to all this the fact before stated, that good faith will not permit the State to leave these works unfinished.[7]

The propriety of completing the enlargement of the Erie canal, is a matter about which there can now scarcely be said to be any diversity of opinion. The products of the great west, annually augmenting to an extent almost incredible, must seek a market through other channels, unless the capacity of this canal shall be increased at an early

[6] Chapter 277, passed May 12, fixed the salary of judges of the court of appeals and of justices of the supreme court at $2,500, but the suggested tax on suits was not imposed.

[7] The construction of the Genesee Valley canal was resumed by chapter 263, passed May 12, and chapter 446, passed December 13; chapter 260, passed May 12, and chapter 447, passed December 13, provided for resuming work on the Black River canal and the Erie canal feeder. The completion of these canals had been directed by article 7, section 3 of the Constitution.

day. Any argument based upon an estimate of the amount to be transported, and the capacity of the canal running through the whole season of navigation, will be found to be fallacious.

The great demand upon this canal occurs in the months of October and November, and such must always be the case. During a portion of that time the canal is taxed to the extent of its capacity, and the delay and expense resulting from the crowds of boats that are struggling towards tide water, and the absence of competition consequent upon a knowledge of this condition of the canal, render the cost of transportation enormous. This expense is all, or nearly all, paid by the farmer. Practically, it is taken from the price of his products. If it cost twenty cents to get a bushel of wheat to a market where it is worth a dollar, the farmer will receive but eighty cents at home. If the government, without prejudice to other interests, can reduce the expense of getting to market to ten cents, and neglects to do so, what answer can it give to the farmer? I do not believe there is anywhere a disposition to augment the State debt, nor is it necessary to the completion of the canal.

I think I hazard nothing in saying that the canals, left to themselves, would complete the canals and pay the public debt at no distant period; and I cannot permit myself to doubt that the Legislature, with the light that the last season of navigation has shed upon this matter, (if the means can be found to do so) will provide at its present session, not for special or local, but for general resumption of the public works.

Unhappily, as I think, the seventh article of the Constitution has thrown obstacles across your path. It cannot be affirmed, I apprehend, that the adoption of the Constitution containing so many valuable provisions, can be regarded as an expression in favor of this article. It was not rejected, because its rejection could only be purchased

by the rejection of a Constitution containing many, very many, wise and enlightened provisions.[8]

I regret to find in an instrument having in it so much to admire, provisions breathing distrust of representative government. But this article not only imposes novel restraints upon the Legislature, but it denies to the whole people the right to vote a single dollar, unless by the same act a tax is imposed to pay principal and interest. Why this distrust of popular feeling? Is there anything in the history of the State that should beget this want of reliance in the wisdom and stability of the people?

The entire debt of the State, both direct and contingent, from information derived from the books of the Comptroller, amounted at the close of the last fiscal year, to $24,734,080.95. Deducting contingent liabilities, it will be found to be $23,021,080.95. The aggregate of the debts contracted on account of all the canals, from information derived from the same source, amounted at the same time, to $17,028,240.13.

The first, second and third sections of the seventh article of the Constitution, provide that of the revenues derived from the canals, after paying the expenses of collection and of repairs and superintendence, there shall annually be appropriated and set apart the sum of one million and three hundred thousand dollars, to constitute a sinking fund for the payment of the canal debt, until the first day of June, 1855; and after that time, the sum of one million and seven hundred thousand dollars, until the debt shall be paid; that there shall be annually appropriated and set apart, the sum of three hundred and fifty thousand dollars, to constitute a Sinking Fund for the payment of the debt called the Generál Fund debt, until the Canal Sinking Fund shall amount to a sum sufficient to pay the canal

[8] Chapter 259, passed May 12, and chapter 445, passed December 13, made provision for continuing work on the Erie canal.

debt; and after that time, the contributions to the Sinking Fund to pay the General Fund debt, are to be fifteen hundred thousand dollars, annually.

In addition to the sum required to constitute these two several sinking funds, the canal revenues are annually to be taxed such sum, not exceeding two hundred thousand dollars, as may be required to defray the necessary expenses of the State.

When we recur to the fact, that the revenues of our canals, including the interest on cash revenues, amounted, for the year ending 30th September, 1846, to nearly two millions eight hundred and fifty thousand dollars, with what entire confidence may we not rely upon the income of the canals to protect us against taxation on account of the present State debt, and for its ultimate extinction? I speak now of the revenues to be derived from the canals in their present condition, assuming that the capacity of the Erie canal will not permit of a material augmentation of its business. Secure the trade of the great opening west, by enlarging the Erie canal, and how unimportant is our present indebtedness considered in connection with the revenues that may reasonably be expected.

The aggregate amount appropriated to the two sinking funds, and to the expenses of government, annually, until 1855, is eighteen hundred and fifty thousand dollars. But for the constitutional requirements, would it not be wise to postpone the contributions to these purposes beyond a sum sufficient to pay the interest upon the State debt, until the canals are completed; and might we not, in that case, reasonably indulge the hope that the increasing revenues promised by the enlargement, would pay our indebtedness at an earlier day than is now expected under the limitations and restraints of the Constitution?

The Constitution has but just taken effect. Of the propriety, at this time, of so amending it as to postpone, for a limited time, the contributions before mentioned, I do

not intend to express any opinion. Nothing but imperative necessity would justify proceedings to amend, at this early period. Besides, it may well be doubted whether executive recommendations to amend the Constitution, would at any time be appropriate.

The whole amount received from all the canals, for the year ending the 30th of September last, was $2,842,214.13, and is made up as follows:

Amount received from tolls	$2,788,134.76
Rent of surplus water	10,715.00
Interest on cash canal revenues	43,364.37
	$2,842,214.13

The sum above mentioned as received from tolls, embraces railroad tolls, amounting to $23,201.89.

Out of the moneys arising from the canals, there have been paid during the last fiscal year:

For interest upon the State debt	$976,552.48
To the General Fund	400,000.00
Making	$1,376,552.48
For collection, repairs, and superintendence, and for all other purposes connected with canals, including the sum of $1,104.87 for tolls refunded	639,353.01
Making in the aggregate	$2,015,905.49
And leaving a balance of the moneys arising from the canals of	$826,308.64

The appropriations under the Constitution, for one-third of a year, ending 30th of September, last, are as follows:

To the Canal Sinking Fund....	$433,333.33	
To the General Fund sinking fund	116,666.66	
To expenses of government....	66,666.67	
Making in the aggregate.....		$616,666.66
And leaves of the moneys arising from the canals		$209,641.98

This balance is not now in the treasury, but has been applied since the first of June last, to the payment of a portion of the canal debt.

The receipts from the canals, for the year ending 30th September next, may be safely estimated, I think, at.....		$2,800,000.00
The whole amount appropriated by the Constitution is.....	$1,850,000.00	
The whole expenses of the canals, I think, cannot exceed.	650,000.00	
		2,500,000.00
Upon this estimate, there will be a surplus the coming year of.....		$300,000.00

There has been paid upon the canal debt, on account of principal and interest, since the first of June last, exclusive of moneys paid to the General Fund under the act of 1843, the sum of $1,042,276.10

Which exceeds the appropriations under the Constitution, for one-third of a year ending 30th of September last, by the sum of.....	$425,609.53
The payments to the General Fund, under the act of 1843, must be regarded as satisfying the claim of that fund, on account of the expenses of government, for the one-third of the year ending 30th September last. So that there should be added to the sum last above mentioned	6,666.67
Making	$492,276.20
This sum must be regarded as diminishing, by its amount, the contribution to the Canal Sinking Fund for the year ending 30th September next, and together with the estimated surplus for the same period, of.....	300,000.00
Will amount in the whole to.....	$792,276.20

Assuming the correctness of my estimate, this sum may be applied the coming year, under the third section of the seventh article of the Constitution, "in such manner as the Legislature may direct, to the completion of the Erie Canal Enlargement and the Genesee Valley and Black River Canals."

In addition to the means above mentioned as within your control, there are funds belonging to the government, amounting to something more than six hundred thousand dollars, which have been treated, in whole or in part, as unavailable.

A large portion of these funds consist of bank fund stocks, at 6 per cent., issued under a law of 1845. These stocks are based upon the contributions by the banks to the Safety Fund, and are now held by the comptroller.

If these funds can be made available, without loss, I respectfully recommend that they be appropriated, together with the prospective means above mentioned, to the resumption of the unfinished public works.

The average expense of collection, repairs and superintendence upon all of the canals for the last ten years, has exceeded five hundred and eighty-four thousand dollars annually. About five hundred and fifty thousand dollars of the moneys last referred to are expended by the superintendents of repairs upon the several sections of the canals. This, it is believed, far exceeds the necessary expense. These superintendents are not unfrequently persons who are made to believe that to retain their places, it is necessary that they should make themselves effective as partisans. The extent of their patronage and power depends upon the amount of expenditure. Every breach of the canal adds to the number of men to be employed and paid.

It is believed that this expenditure may be materially diminished, by dividing the canals into small sections, and contracting with private individuals, for repairs and superintendence; and certain it is that a most pernicious patronage would thus be cut off. Contractors would be interested to guard against, rather than by inattention to promote breaches; and that watchfulness which their pecuniary interest would not fail to excite and keep alive, would secure the public against much of the delays that result from what are now regarded as accidental breaches of the banks of the canals. Injuries of this description may sometimes be unavoidable, but they will rarely occur under the eye of a vigilant contractor.

The House of Assembly, at the last session, passed a bill to provide for these repairs and superintendence, by contracting with the lowest bidder; but the bill did not pass the Senate. I earnestly, but respectfully, recommend this subject to your careful consideration.

The amount of capital, and the annual revenues, of the several funds appropriated to the purposes of education, may be stated as follows:

The capital of the Common School Fund is.	$2,133,943.01
The United States Deposit Fund is.....	4,014,520.71
The Literature Fund is.....	265,196.51
Whole amount.....	$6,413,660.23
The annual revenue from the Common School Fund is.....	$117,180.60
From the United States Deposit Fund.....	276,667.61
Literature Fund	17,353.93
Whole revenues.....	$411,202.14

By the amended Constitution, $25,000 is required to be taken annually from the revenues of the United States Deposit Fund, and added to the capital of the Common School Fund.[b]

The State Normal School continues to advance in public estimation and public usefulness. Its only object is to improve the teachers of common schools, and any progress in the advancement of that object, it is quite apparent, must exert a salutary influence on the cause of education, throughout the State.

During the year ending on the first day of July, 1846, seven hundred and forty thousand seven hundred and twenty-three children have been taught in our common schools. This number exceeds by 40,243 the whole number of children in the State, between the ages of five and sixteen years, inclusive. The amount of public moneys that has been received from all sources by the town superin-

[b] Const. 1846, art. 9, § 1.

tendents, is $766,724.66. Exclusive of the public money, $460,307.68, has been paid on rate bills for teachers' wages. The district libraries contain 1,201,088 volumes. This whole subject will, doubtless, receive at your hands that consideration which its great importance demands.

By the eighth section of the seventh article of the Constitution, it is believed that all laws making special appropriations to literary and charitable institutions, are repealed.

That the fostering care of the State should be extended to many or all of the literary institutions that have, up to this time, been the subjects of its peculiar care, I cannot permit myself to doubt.

In respect to those charitable institutions that have for their objects the relief of the insane, and the education of the deaf and dumb and the blind, humanity will readily enough suggest to you your duty. I know of nothing in the condition of the State that requires that these appropriations should be withheld.

Reports, showing the condition of the several State prisons, and of the House of Refuge in the city of New York, will be laid before you at an early day.

I refer you to the report of the Adjutant General, which will be communicated to you as early as practicable, as containing all the information possessed by me in regard to the militia. The law of the last session in most respects, I believe, has received general approbation. It has not been carried into effect, and I presume an indisposition to break up the organization of the first division of artillery, and of several independent companies, has influenced (and I think properly) the action of the government in this respect. I am informed that the discipline of the several companies comprising the first division of artillery, is of the highest order known to the military of this country, and that nothing less should be said of several other independent companies which need not here be particularly speci-

fied. The dissolution and re-organization of the several bodies above referred to, would doubtless occasion many changes of their officers; but it is not to be expected that such changes would be improvements. I therefore recommend to your consideration, the propriety of so amending the law as to preserve such military organizations as may be designated by some officer upon whom you may confer such authority, as worthy of preservation.[9]

The duty of framing general laws under which corporations may be formed, is devolved upon you by the eighth article of the Constitution, and it is not among those of the least importance. There is scarcely any subject of legislation to which the public is looking with more interest, than to that which relates to corporations for manufacturing purposes. Wise and enlightened legislation in this regard will secure the investment of capital in manufacturing corporations, here, as in New England, and with like success.

As it relates to the guards to be stationed around these associations, as well as those relating to banking, there is much variety of opinion, and I have no such settled and well defined convictions as will justify a series of specific recommendations. I think, however, that it may safely be affirmed that provisions in either case requiring the capital stock to be fully paid in, will furnish no inconsiderable protection.[10]

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[9] The organization of the first division of militia was provided for by chapter 205, passed May 6. A new militia law, chapter 290, was passed May 13, repealing the general act of 1846, and other inconsistent statutes. The new act did not apply to the first military division district as prescribed by chapter 205, above noted, which provided for the organization of this division.

[10] Chapter 210, passed May 7, provided for the organization of plank road and turnpike road companies. The incorporation of villages was provided for by chapter 426, passed December 7. See the statutes of 1848 for other general corporation laws.

Chapter 210 of 1847 was considered in Benedict v. Goit (1848), 3 Barb. 459, which sustained section 26, relative to taking public highways.

The sixth section of the eighth article of the Constitution is in the following words: "The Legislature shall provide by law for the registry of all bills or notes issued or put in circulation as money, and shall require ample security for the redemption of the same in specie." The security required by this section is entirely within the discretion of the Legislature, and will, I have no doubt, be wisely exercised.

This section looks alone to protection to the billholders. Can any better security be provided than by requiring the banks to contribute, say one half of one per cent., annually, to a fund for the redemption of the notes of insolvent banks, the interest arising from such fund to be received by the banks in the ratio of their contributions respectively? I do not feel that confidence in these suggestions that will permit me to place them before you in the light of recommendations; but I may be permitted to say that such contributions, while they would secure the present confidence of the public in our bank notes, as a circulating medium, would give additional strength to the Bank Fund Stocks now held by the Comptroller.

Having thus briefly glanced at the "condition of the state," in conformity with the requirements of the Constitution, and recommended to you such matters as in my judgment especially demand immediate legislation, I commend to your careful and enlightened consideration all the varied interests of this great State, with the most confident assurance that all of your enactments will be made in conformity with those fixed and immutable laws which a wise Providence has ordained.

JOHN YOUNG.

Albany, January 5, 1847.

Chapter 426 of 1847 was considered in Blauvelt v. Nyack (1876), 9 Hun, 153, where sections 90 and 91, providing for the dissolution of villages were sustained. See also Bank of Chenango v. Brown (1863), 26 N. Y. 467, sustaining § 92, which authorized the acceptance of parts of the new general law by existing villages incorporated under special acts.

SPECIAL MESSAGES.

January 19. To the Assembly: Transmitting the annual report of the Adjutant General.

January 22. To the Assembly: Transmitting a communication from Nathaniel Griswold and others of the city of New York. The records do not contain the communication, nor indicate its subject.

March 3. To the Assembly: Transmitting resolutions adopted by the Legislature of Missouri, February 2, 1847, recommending "such alteration and modification in the laws and regulations of the army of the United States, as will abolish the great distinction now existing between the officers and soldiers thereof, and place them on an equality consistent with our free institutions, so far as practicable;" that the compensation of officers and soldiers be equalized by reducing the pay of the former, and increasing the pay of the latter, and that permanent provision be made for pensions to widows and children of members of the army dying while in service, without distinction as between officers and soldiers.

March 11. To the Assembly: Transmitting a communication from the Secretary of the Navy, requesting a cession of jurisdiction over land at Sacketts Harbor, recently purchased by the United States for military purposes.[11]

March 13. To the Assembly: Transmitting the annual report of the Commissary General.

March 15. To the Assembly: Transmitting a communication from the keeper of Clinton Prison, urging an early appropriation to meet the needs of the prison.[12]

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[11] Chapter 153, passed April 28, ceded to the United States jurisdiction over land at Sacketts Harbor, described in the communication from the Secretary of the Navy. The same act authorized the government of the United States to acquire any island or islands in the St. Lawrence River for beacon lights, and other necessary purposes.

[12] Chapter 45, passed March 30, appropriated $25,000 for immediate use at Clinton Prison.

March 23. To the Assembly: Transmitting resolutions adopted by the General Assembly of Virginia, on the 7th of March, 1847, protesting against the following proviso contained in a bill which had recently been passed by the House of Representatives appropriating money to prosecute war or negotiate peace with the Republic of Mexico:

"Provided, That as an express and fundamental condition to the acquisition of any territory from the republic of Mexico, by the United States, by virtue of any treaty which may be negotiated between them, and to the use by the Executive of the moneys herein appropriated, neither slavery nor involuntary servitude shall ever exist in any part of said territory, except for crime, whereof the party shall be first duly convicted."[13]

March 29. To the Assembly: Transmitting a communication from the chiefs of the Onondaga Indians relative to affairs of that tribe. [See Assembly Document No. 124.]

April 26. To the Assembly: Transmitting a communication from the Secretary of the Navy, relative to the ces-

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[13] In January, 1847, the New York Legislature adopted concurrent resolutions in relation to the Mexican War, urging that every citizen sustain the federal government, declaring that any peace to be negotiated should secure indemnity to American citizens for aggressions by Mexico, and that any act by which territory might be acquired by or annexed to the United States in consequence of such war "should contain an unalterable fundamental article or provision, whereby slavery or involuntary servitude, except as a punishment for crime, shall be forever excluded from the territory acquired or annexed." The declaration against slavery in the acquired territory was repeated in resolutions adopted by the New York Legislature in January, 1848.

The act of Congress of September 9, 1850, providing among other things for the establishment of a territorial government in New Mexico, and which reserved the right to erect other territories therefrom, contained the provision "that when admitted as a state, the said territory, or any portion of the same, shall be received into the union, with or without slavery, as their Constitution may prescribe at the time of their admission."

This provision in the act of Congress became inoperative by the adoption of the 13th amendment in 1865, which prohibited slavery in the United States, or in any place subject to their jurisdiction.

sion of lands desired by the United States at Sacketts Harbor. The same communication was transmitted by the special message of March 11. [See note 11.]

May 4. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *May* 4, 1847.

"I herewith transmit a communication from the Secretary of State, by which it appears that the county of Niagara has not been divided into Assembly districts, in pursuance of the fifth section of the third article of the Constitution.

This county is entitled to two members of Assembly, and inasmuch as no division was made at the time required by the Constitution, I respectfully submit for your consideration, the propriety of providing by law for a meeting of the board of supervisors, to make such division.[14]

Very respectfully,

JOHN YOUNG."

May 13. The Legislature adjourned until the 8th of September.

1847. SEPTEMBER 8. LEGISLATURE, SECOND MEETING.

SPECIAL MESSAGES.

September 9. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *Sept.* 9, 1847.

"Silas Wright, the late Chief Magistrate of this State, died at his residence, in Canton, in the county of St. Lawrence, on the 27th day of August last.

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[14] Chapter 265, passed May 12, authorized the board of supervisors of Niagara County to meet on the first Tuesday of July, 1847, and divide the county into Assembly districts.

Although scarcely arrived at the meridian of life, he had not only held the office of Governor of this State, but had discharged with singular ability, the various duties pertaining to the offices of State Senator, Comptroller, and Senator in the Congress of the United States.

As a statesman, he occupied a high place among the distinguished public men of the age.

In private life, he enjoyed in an eminent degree, the respect and esteem of those to whom he was personally known.

Although his name will go down to posterity without the aid of official records, his eminent public services and great private worth, render it proper that I should thus announce to you his death, to the end that such measures may be adopted, as are demanded by the deep feeling that pervades the community.[15]

JOHN YOUNG."

October 23 and 25. To the Senate and Assembly respectively:

"EXECUTIVE CHAMBER,
ALBANY, *October* 23, 1847.

"I herewith transmit a communication from the Secretary of State, relating to the distribution of the volumes of the Natural History of this State, which have been sent to France, under the provisions of chapter 254 of the laws of 1844, together with the papers referred to, in such communication.

Among the last mentioned papers, is a letter from M. Alexandre Vattemare, of Paris, who, for some time past, has devoted all his energies to the promotion of international exchanges of scientific and literary works. In his efforts to promote these exchanges, M. Vattemare has been most successful, and with the aid of his enlightened exer-

[15] Resolutions on the death of former Governor Wright were adopted by both houses on the 9th of September.

tions, the libraries of this and several others of the States and of the United States, have been enriched and embellished, and our relations of friendly intercourse with other countries, confirmed and strengthened.

The respectful consideration and regard of the King of the French and others, officers of his government, and the friendly interest manifested by M. Vattemare for us, will appear by a list of the donations received through him, which is herewith transmitted, and by reference to the last three annual reports of the trustees of the State Library.

Among people as enlightened as ours, there can be no diversity of opinion, I apprehend, as to the propriety of such legislation, as may be necessary to continue these exchanges, and I respectfully recommend the subject to your consideration.[16]

JOHN YOUNG."

December 15. The Legislature adjourned without day.

1848. JANUARY 4. LEGISLATURE, SEVENTY-FIRST SESSION.

JOHN YOUNG, Governor.

ANNUAL MESSAGE:

FELLOW CITIZENS.— In the discharge of so much of the duty imposed by the Constitution, requiring me to communicate annually to you the condition of the State, as relates to its fiscal affairs, I refer you to the annual report of the Comptroller, which will be laid before you at an early day.

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[16] By chapter 378, passed November 17, provision was made for the expense of "statistical, literary and scientific interchanges between this state and other states and foreign nations," and by chapter 412, passed December 2, the clerk of the Assembly was directed to furnish to Alexandre Vattemare four copies of the journal of the New York Provincial Congress for the years 1775, 1776, and 1777.

By that document you will be informed that the indebtedness of the State, on the 30th September last was as follows:

General Fund debt	$6,139,840.86
Canal Debt	16,743,749.57
Making the whole debt of the State	$22,883,590.43
The liabilities of the State, on account of railroads, which may be set down as contingent State debts, amount to	1,563,000.00
Making an aggregate of indebtedness, direct and contingent, of	$24,446,590.43
The revenues from the canals for the year ending the 30th September last, were	$3,473,484.60
The expenses of the canals for the same period, including the sum of $3,995.76, for tolls refunded, were	643,766.08
Leaving an aggregate of surplus revenues of	$2,829,718.52
From this sum there has been taken the contributions to the several Sinking Funds, under the "seventh" article of the Constitution, amounting in the aggregate to	1,850,000.00
Leaving a balance, of	$979,718.52

This last mentioned sum is pledged by the Constitution to the enlargement of the Erie and the completion of the Genesee Valley and Black River canals. Appropriations

have been made by your predecessors embracing the whole sum, and anticipating twenty-nine thousand dollars of the surplus revenues of the current year.

The receipts of tolls since the 30th of September last, amount to one million four hundred and nineteen thousand four hundred and twenty-three dollars and seventy-five cents. The expenditures for the same period have not yet been ascertained.

The amounts of the State stocks originally issued and made payable on the first day of July next, is.....	$1,584,736.00
Of this there has been redeemed.....	346,006.00
Leaving a balance outstanding of.....	$1,238,730.00
To this is to be added nine months interest on the entire canal debt from the 30th September, 1847, to July 1st, 1848.....	685,335.67
Making an aggregate of.....	$1,924,065.67
To meet this indebtedness at maturity, there will be derived from the Sinking Fund under the Constitution, and one-tenth of the mill tax for each of years 1845 and 1846, means amounting in the whole, to	1,102,548.51
And leaving a deficiency unprovided for on the first of July, 1848, of....	$821,517.16

In my last annual message, I invited the attention of your predecessors to the importance of completing the Erie enlargement, and the Genesee Valley and Black River canals, at an earlier day than was to be expected under the restraints of the "seventh" article of the Constitution,

and I then expressed the opinion that if the contributions to the several Sinking Funds (except such sum as would be necessary to meet the accruing interest upon the public debt), should be suspended until the unfinished public works were completed, we "might reasonably indulge the hope that the increasing revenues promised by the enlargement, would pay our indebtedness at an earlier day than was to be expected under the limitations of the Constitution," and nothing has since occurred to change that opinion.

The limits prescribed to this communication will scarcely permit me to speak of the facts connected with the necessity of enlarging the Erie canal, and the delays incident to its navigation with its present limited capacity; besides, it is believed this information will better reach you through the appropriate committees.

In 1835, ten years after the completion of the Erie and Champlain canals, the debt which had been incurred for their construction had been virtually paid, and the State, free from direct taxation, was in the full enjoyment of the revenues of these great channels of trade, and of the specific revenues which had been diverted from the general purposes of the government, as well as of all its ordinary revenues. But it was found thus early that the locks, aqueducts, and other mechanical structures on the canal, were already worn with time and use, and that the Erie Canal, owing to its limited dimensions and inadequate lockage, had failed to secure to our citizens the greatest practicable benefits of cheap transportation for their own productions, and that full command of the western trade which had been anticipated. Enlargement having thus become necessary, it was wisely determined to perfect it in a durable manner, and with capacity sufficient for the vast increase of business then foreseen, and since realized.

In 1836 the State engaged in the construction of the Black River canal, to connect Lake Ontario and the Erie

canal, through a broad region deprived of facilities of access to market; and also the Genesee Valley canal, designed to connect the head waters of the Ohio with the Erie canal, and make its trade tributary to New York.

The estimated cost of all these works, submitted by the proper department, was $15,475,201. The work was prosecuted, with quite inadequate appropriations, till 1838, when, by an elaborate examination of the financial condition of the State, made by a committee of the House of Assembly, it was shown that the works might be prosecuted more vigorously, because, while they were estimated to cost only about fifteen and a half millions, the revenues of the canals alone were such that, if necessary, the State might expend thirty millions of dollars, and receive full reimbursements of that sum from the canals before 1857; or even forty millions, if necessary, and be reimbursed from the same revenues before 1865, without the resort to any tax, or the diversion of any of the other revenues of the State. This calculation was based on an estimate of such a constant increase of revenues from all the canals that in 1849, ten years after the completion of the enlargement, the revenues of the canals would reach three millions of dollars. This estimate, not only in its comprehensive results, but in its minute details, has been subjected to the test of time. The enlargement has not been completed, and the year 1849 has not arrived, but the calculation has been fully verified, and the tolls have already reached to nearly the sum of three and a half millions of dollars. The State adopted, in 1838, the more vigorous policy, based on this calculation, and pursued it until 1842, notwithstanding the discovery was made, in 1839, that the cost of the canals, instead of fifteen and a half million of dollars, as at first estimated, would rise to the sum of thirty millions four hundred and forty-five thousand five hundred and eighty-seven dollars. It is now clearly seen, by the demonstration of time and experience, that if the State had firmly and prudently persevered

in that policy to the end, we should now, without having paid any taxes, or incurred any necessity for taxation whatever, have had free navigation from the great lakes, through Jefferson and Lewis and Oneida counties, to Rome; and from the Allegany River, through Allegany, Livingston, and Monroe counties, to the Erie canal and the lakes; and a canal seventy feet wide and seven feet deep, with durable double locks, and firm and capacious aqueducts, from Lake Erie to the Hudson river.

Thus our great system of inland navigation would have been completed and perfected; the tolls and cost of transportation on the Erie canal would have been greatly reduced; a considerable portion of the expenditure reimbursed; the remaining cost of these structures would have been discharged in 1857, and the State left in the enjoyment of revenues, even at such reduced rates of tolls, of not less than five millions of dollars per annum. Instead of occupying this high vantage ground, we are now resuming the Genesee Valley Canal, which was relinquished after one-third of it had been constructed — the Black River canal, suspended, when one-half completed, and the enlargement of the Erie Canal, abandoned when nearly one-half of the cost of the enterprise had been paid. We resume these works after having paid about half a million of dollars of damages to contractors — after having lost for five years the interest on more than fifteen millions already expended, and incurred unascertained losses from the waste of materials and the dilapidation of unfinished works and structures.

But our constituents, with creditable unanimity and enlightened urgency, expect the Legislature will sanction the most energetic efforts that can be made under circumstances so peculiar, to complete enterprises which are no longer of merely speculative importance, but have become, through the lapse of time, the advance of the country, and the vigorous rivalry of competitors for the western trade,

indispensable to our prosperity and to the maintenance of that high ascendency hitherto secured to us by the enlightened and energetic policy of our predecessors.[1]

In this connection, there is no subject of more immediate interest to the people of this State, than the construction of safe and commodious harbors on the western lakes, and the improvement of the navigation of our rivers. The former is necessary to enable the Western States, our principal customers, to bring their produce to our canals for transportation — the latter is required to facilitate its transit to our markets. The rapid increase of commerce upon those inland seas has corresponded with the increase in the population and wealth of the States that lie upon their borders.

All estimates in regard to the tonnage or trade of the Lakes must be imperfect, from the absence of any regular system of statistics. The enrolled and licensed tonnage in 1841, as exhibited in the official report of the Treasury department, amounted to 56,252 tons. From the same source it is ascertained to amount in 1846, to 106,836 tons. Lieut. Colonel Abert, in a very able report, made in answer to a resolution of the Senate of the United States, estimates the net value of the lake commerce for the year 1846, at $61,914,910, to which he adds $1,250,000 for the "passenger trade," making a total of $63,164,910.

It is estimated that for the next ten years this trade will increase at the rate of seventeen per cent. per annum, showing the net value of our Lake commerce in 1857, at $170,545,257. The number of entries and clearances for the whole American lake commerce, in 1846, amounted to 15,855, while all the entries and clearances of all the vessels be-

[1] Chapter 213, passed April 10, appropriated $750,000 for work on the Erie canal enlargement, and $160,000 for the completion of the Main and Hamburgh Street canal and appurtenances in Buffalo. Chapter 214, passed April 10, appropriated $130,000 for work on the Black River canal and Erie canal feeder. Chapter 217, passed April 10, appropriated $218,000 for the Genesee Valley canal.

longing to the United States, and engaged in foreign trade, amounted to 16,562. The vessels employed in this vast inland trade, nearly rivaling all our foreign commerce, and which is considered as hazardous as that of the high seas, require safe and commodious harbors, piers and light houses for their protection. The early attention of Congress was called to this subject, and appropriations were solicited for the construction of these necessary improvements. Inadequate sums were, from time to time, appropriated for the construction or commencement of a chain of public works which stretched along the southern shore of nearly all the lakes that flow into the St. Lawrence. These appropriations contemplated the improvement of the mouths of the rivers, by removing the bars, or by deepening or widening the channels at their mouths, the erection of piers and light houses, and such other expenditures as would furnish to the prescribed localities, safe and sufficient harbors. The original appropriations for many of these objects were barely sufficient to survey and commence the improvements, but those interested in their construction, looked confidently to Congress for the means for their completion. It was believed to be the settled policy of the federal government to foster and protect this important branch of our national commerce. It is the great channel through which the western farmer sends his produce to an eastern market.

In July, 1846, an act appropriating one million three hundred and seventy-eight thousand four hundred and fifty dollars, was passed by Congress "for the improvement of rivers and harbors." The President of the United States,* on the 3d of the following August, returned the bill to the House of Representatives with his objections. In addition to his constitutional objections to the bill, the President apprehended that should it "be sanctioned and become a law, no practical constitutional restraint can hereafter be

* James K. Polk.

imposed upon the most extended system of internal improvements by the federal government in all parts of the Union." The doctrine of one of his predecessors, that "appropriations of this character should be confined below the ports of entry and delivery established by law," is discarded by the present executive, and therefore even such expenditures have ceased to be constitutional.

Since the meeting of the present session of Congress, the President has returned a bill, with his objections, passed near the close of the last session, "for constructing certain works in the Territory of Wisconsin, and for other purposes." The President states that on returning a bill to the House of Representatives at the preceding session, containing similar provisions and appropriations, he stated his objections to its passage, and that those objections remain unchanged. The unconstitutionality of these appropriations for the protection of our commerce, is insisted on and ingeniously enforced. The President also argues against the appropriations, for the reason, that if Congress is allowed any discretion in similar expenditures, there could be no restraint upon the amount of money that would be squandered. This subject is quite too important not to attract the attention of every statesman, and I cannot doubt that views more in conformity with the public interest will ultimately prevail. But a discussion as to the power of Congress to make appropriations for lake harbors and the improvement of rivers, or in respect to the exercise of such a power, assuming that it exists, is inappropriate to this communication, and has only been alluded to here from its intimate connection with the prospective legislation of this State in regard to the Erie canal.[2]

[2] On the 29th of January, 1848, the Senate adopted resolutions which were concurred in by the Assembly on the 12th of April, among other things declaring that "the constitution of the United States has vested in Congress the entire and exclusive legislative power over commerce with foreign nations and among the several states,[e] and as there cannot exist an extensive commercial

[e] U. S. Const. art. 11, § 8, clause 3.

In my annual communication to your predecessors, I expressed the opinion that the security required for the redemption of bank notes under the sixth section of the eighth article of the constitution rested entirely in the discretion of the legislature, and this opinion seems to be generally acquiesced in. Although the subject engaged much attention of the legislature at its last session, no general laws were passed for the government of banking institutions. These institutions exert an important influence upon the business interests of the State, and if you shall consider the time auspicious for the enactment of laws to provide for their organization and management, I have no doubt you will enter upon the discharge of that duty with a full consciousness that it will require of you great wisdom in establishing general principles, and the utmost patience and care in settling details.

No bank charter will expire during the present year. Of the seventy-seven banks in this State, doing business under special charters, the charter of one will expire in 1849; four in 1850, and the residue from 1851 to 1866, inclusive.

There were of the stocks of this State, held in trust by the Comptroller on the first day of December last, to secure the redemption of notes issued by banks doing business under the General Banking law, seven millions nine hundred thousand two hundred and thirty-nine dollars and eighty cents; and of the stocks of the United States, one hundred and nineteen thousand dollars.

Under our present laws, the stocks of the United States are not receivable by the Comptroller as the basis of bank

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intercourse with foreign nations, and among the several states without safe and convenient harbors, it is the right and duty of Congress and of the Executive to make judicious appropriations for the improvement of the harbors on the lake frontier and on the Atlantic and Pacific sea coast; urging the general government to provide for the improvement of rivers and harbors, not only in the interests of commerce, but for the purpose of fostering the union of the States, and disapproving the President's veto of the harbor bill."

issues. The propriety of so amending the laws as to provide for their reception, has been agitated, and, I doubt not, will be again at your present session. That such provision by law will ultimately become necessary, can scarcely be doubted; but I do not think a proper regard for the prospective value of our own stocks will justify it, at this time. While this cannot be said to be a season of pecuniary embarrassment here, the markets are feverish and delicate, and such a condition of things is not, in general, propitious to financial legislation.[3]

In our country, for reasons that have been so often and so well stated that I need not repeat them, the education of its children has been, and I trust, will continue to be, matter of the deepest solicitude. Common schools, from their universality, reaching every neighborhood, and shedding their influence upon every family, and into every mind, expelling the primary causes of vice and crime, and erecting altars to patriotism and virtue, have justly been considered the peculiar objects of legislative care.

The practical importance of the State Normal School, for the education of teachers, is beginning to be felt; and in the tone, strength and vigor to be given to common schools, by distributing through the State, teachers who shall have been thoroughly instructed, it is believed, will be found most convincing arguments in defence of reasonable but liberal appropriations by the State to this object.[4]

The capital of the Common School Fund is $2,170,514.47, and its annual income for the last fiscal year $131,554.21. The capital of the United States Deposit Fund is $4,014,-520.71, and the annual income thereof for the last fiscal year was $262,370.76.

[3] Chapter 340, passed April 12, amending the general banking law of 1838, contained provisions relative to redemption of circulating notes issued by banks, requiring securities to be either in state stocks, or one-half in such stocks and one-half in seven per cent mortgages on unincumbered real estate.

[4] Chapter 318, passed April 12, appropriated $15,000 for a building for the use of the Albany Normal School.

By the ninth article of the Constitution, it is provided that "the sum of twenty-five thousand dollars of the revenues of the United States Deposit Fund, shall, each year, be appropriated to and made a part of the capital of the said Common School Fund;" and by an act of the 12th of May last, it is provided that the residue of the United States Deposit Fund, not otherwise appropriated, shall be annually added to the capital of the Common School Fund.

The amount of "public money" paid, on account of teachers' wages, for the last year, was	$605,390.11
And the amount paid on rate bills.....	462,840.44
Making an aggregate of.....	$1,068,230.55

From the returns made by the town superintendents, for the year ending 30th June, 1847, it appears that the whole number of children in the State, between the ages of five and sixteen, is seven hundred thousand four hundred and forty-three, and that the number of children taught in the common schools during the year was seven hundred and forty-eight thousand three hundred and eighty-seven—exceeding the number between the ages of five and sixteen by forty-seven thousand nine hundred and thirty-four. The strength that district libraries have acquired, evidences the public appreciation of these important auxiliaries to our primary schools. During the last year, ninety-two thousand eight hundred and ninety-nine dollars and fifty-eight cents have been paid for books, and there are now in these district libraries one million three hundred and ten thousand nine hundred and eighty-six volumes.

Having discharged our whole duty to common schools, the higher institutions of learning must not be forgotten. Any abatement of the interest of the State in these institu-

tions is to be felt almost exclusively by those, who, in their inquiries after knowledge, most require the paternal care of the State. By the fortunate sons of the affluent it is regarded with entire indifference, but to those who are the "artificers of their own fortune," rowing against a strong current, struggling with poverty and laboring with their hands to procure the means of cultivating their minds, it is matter of vital importance. The doctrine that would deny to these institutions any participation in the moneys, from time to time appropriated by the State to the cause of education, would strengthen the aristocracy of wealth by adding to it the aristocracy of letters.

The protection of property and the encouragement of its acquisition are among the important elements of civilization, but in legislating for a people whose institutions permit any boy, whatever his birth or condition, to aspire to the highest places of honor and usefulness, it is a manifest duty to enact such laws, relating to mental culture, as will place aspirants for honorable promotion upon a footing of equality.

While you should leave nothing undone to improve the character and enlarge the sphere of common schools, I feel assured, that the ability of the State, in so far as it can be exerted without prejudice to other interests, will be put forth to furnish facilities for a higher order of attainments in literature and science.

The income of the Literature Fund is pledged by the Constitution to the academies. The capital of that fund is $265,306.78, yielding an income the last fiscal year of $17,335.65.

By an act of the 12th of May last, there was appropriated of the revenues of the "Literature Fund" thirteen thousand dollars, and of the United States Deposit Fund twenty-seven thousand dollars, making in the aggregate forty thousand dollars, for each of the years eighteen hundred and forty-seven, and eighteen hundred and forty-

eight, to be apportioned by the Regents of the University among the several academies and seminaries of learning, in proportion to the number of pupils in each who shall have pursued the requisite studies to entitle them to share in such distribution. The same act appropriates eight hundred and fifty dollars, to be paid to the Regents of the University, to defray certain expenses incident to the care of these institutions, and the further sum of three thousand seven hundred dollars, to be assigned to certain academies and seminaries of learning, for the purchase of text books, maps, globes and philosophical and chemical apparatus. These last appropriations were also made, as well for the last as this year. This act also makes special appropriations, for the same period, to several medical colleges and other institutions of learning, to be paid out of the United States Deposit Fund.[5]

The year just closed, it may safely be affirmed, has been to the people of this State, a season of unparalleled prosperity and happiness. The earth has furnished almost every description of agricultural products in great profusion and perfection; these have found a ready market at liberal, and in many instances extraordinary prices; and in the prosperous condition of other avocations, trades and professions, is furnished another illustration of the truth of the theory which affirms that a wise regard to the interests of those who cultivate the earth, is the surest protection to the various interests of the people of the State.

For the liberal prices with which labor has been rewarded, we are not a little indebted to the condition of parts of the old world, and particularly of parts of Scotland and Ireland. Our generous and active sympathies for the sufferings of that country, so truthfully described by a distinguished statesman, as "poor, gallant, generous and oppressed Ireland," have been felt and acknowledged.

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[5] Several colleges were recipients of appropriations made for education purposes by chapter 236, passed April 11.

Her situation is still painfully interesting, and may furnish new evidence of the alacrity with which a free people rush to the relief of the trodden down and oppressed. But the influence of these unhappy causes upon the value of our agricultural products, at the expense of so great suffering, is never to be desired. What we should most desire, in this regard, is a stable market. Our permanent interests cannot be promoted by temporarily large and extravagant prices; that condition of things is to be sought which will furnish the best security for a market subject to comparatively little fluctuations, and thus stimulate exertion by inspiring a reasonable confidence that labor is to receive fair remuneration.

The experience of the past, it is believed, furnishes very little reason to hope for or expect a steady demand for any considerable portion of our surplus productions in foreign countries. While therefore an extraordinary state of things abroad, dependent upon the seasons and other causes not within our control, and in respect to which, either in regard to time or extent, no safe prediction can be made, may create a temporary demand for such articles, the growth of our country, as may not so readily find customers here, it is quite apparent that a demand for consumption, at home, is the only safe reliance for the husbandman.

If to the stock of consumers in our villages and commercial cities, we could add the manufacturers of such fabrics, the labor of foreign hands, as we now consume, much would be done to establish a permanent and stable market at home, and to attain the end sought by that wise and far-seeing patriotism which looks to the protection of the manufacturer, not so much in respect to his interest, as to secure to the agriculturist a fair reward for his labor.

Assuming that all other occupations, trades and professions are dependent upon and derive their nutriment and support from the farmer, the principle sometimes

maintained (though by comparatively few at the North) that National legislation which extends protection nominally to the manufacturer, is partial in its application, and tends to build up one great interest at the expense of all others, will be found to be fallacious; for while it acts primarily upon the manufacturer, its secondary and important influence is the support it gives to the tiller of the earth.

I have alluded to these considerations, not with a view to the discussion of a great question of national policy, but to invite your attention, in this, its proper connection, to the importance of early, efficient and practical legislation in respect to manufacturing corporations.

Your immediate predecessors devoted much time to the consideration of questions connected with corporations of this character, and the House of Assembly, after much research and deliberation, and after consulting the statutes of several of the sister states, and becoming acquainted with their practical operation, framed a bill that received the assent of a large majority of that body.

Under the laws of no state have associations for the application of mechanical labor been more prosperous than in Massachusetts, and nowhere, it is believed, has private manufacturing been so generally and successfully prosecuted. The bill framed and adopted by the Assembly, embraced, substantially, the provisions of the laws of that state applicable to associations for manufacturing purposes. With a jealous regard for the interests of the laborer, the House of Assembly, to provide for him additional safeguards, inserted provisions in the bill requiring the "trustees and managers" to publish, annually, the amount of capital and of existing debts, and in default to be personally liable. The corporators were also rendered personally liable for making any false certificate or notice relating to the business or affairs of the company; or whenever the debts of the association should exceed the amount

of its capital stock, and for making dividends when the company should be insolvent. The bill also provided that all of the corporators should be liable for all of the debts and contracts of the corporation until the whole of the capital stock is paid in; and that they should all be liable, permanently, to "agents, laborers, and operatives, for services." The Senate entertaining opinions adverse to those of the Assembly, the bill was lost; and I respectfully invite your attention to the subject, with a full conviction that your sympathy with the laboring classes will admonish you of the importance of early and decisive action.

Before taking leave of this subject, it may not be inappropriate, and perhaps it is due to such of your predecessors as occupied seats in the Senate when the bill to which I have referred was lost, to recur to the language of the Constitution touching the liabilities of corporators. The "second" section of the "eighth" article of the Constitution is in the following words: "Dues from corporations shall be secured by such individual liability of the corporators, and other means, as may be prescribed by law." The effect of this provision not having been settled by the judiciary, its language is now, for the first time, to receive a legislative construction. All arbitrary rules of construction have given place to one simple rule, which requires us to give effect to the words in their ordinary signification, considered in connection with other parts of the instrument, and the history of the period when it was written. It will be conceded that the word "corporations," as used in this section of the Constitution, is broad enough to embrace every description of corporations known to the laws of this State, among which may be enumerated railroad, municipal, manufacturing, charitable, religious, and banking corporations. I should be most reluctant to come to the conclusion that the members of municipal and religious corporations are hereafter to be made personally

liable, but such will be the effect of one construction of the language we are considering.

For several years prior to, and at the time of the session of the Convention that framed the Constitution, the doctrine of "individual" or "personal liability" of corporators was a topic of much interest, and not a little variety of opinion; some insisting upon unlimited personal liability, others demanding its application only to the extent of the capital stock owned by the corporators respectively, whilst others insisted that it should attach only in cases of fraud or the failure to comply with certain statutory requirements, and others again denied the propriety of its application altogether.

When, therefore, the framers of the Constitution used the term "individual liability," they used language imperfect and indefinite, except in connection with other parts of the instrument, and words that would be applicable to "individual liability" in either of the forms I have mentioned. If, therefore, it "shall be prescribed by law" that corporators shall be individually liable in cases of fraud, this must be regarded as "individual liability" within the meaning of the Constitution, and a substantial compliance with its requirements. The whole expression "such individual liability" is still more significant, and strengthens, if possible, this construction.

The history of the period is important to be considered in another respect. The advocates of "individual liability" insisted that to banking corporations, "issuing bank notes, or any kind of paper credits to circulate as money," more than to all others, should the doctrine of "individual liability" attach. And yet the "seventh" section of the same article of the Constitution provides, that in the last mentioned class of cases, it shall attach only to the amount of the share or shares of the corporators, respectively. If the second section of this article had provided for unlimited individual liability, it may well

be asked, why has the seventh section created a special and limited liability for banks issuing their paper to circulate as money? Is it not absurd to suppose, that while the last mentioned corporators are required to assume only limited personal responsibility, the members of religious and all other corporations, are to be made liable, without limitation? In relation to banks, the language is explicit, and if it had been the intention of the Convention that, in all other cases, persons who should become members of a corporation should be made personally liable for all its "dues," we are bound to intend that ordinary language to convey its meaning would have been employed, and that instead of the "second" section of the "eighth" article, a provision would have been inserted, declaring in express terms, that the members of corporations should be individually liable for all demands against the corporation, excepting from its operation, such banking corporations as should issue their paper to circulate as money. While, therefore, the Legislature may impose "such individual liability," as, in its judgment, the public interest may require, and while it must impose some, the kind and extent of liability, except as to banks, is believed to be a matter of legislative discretion.

The use of the word "secure," in the section referred to, is not believed to be in conflict with this construction. To secure, is to make safe or certain; but as no obligation to pay can be rendered certain beyond contingency, the adoption of any and every means to secure its performance implies the exercise of discretion by those whose duty or interest it may be to attain that object. By some, unlimited individual liability would be regarded as the best security, whilst others, believing that the effect of imposing such responsibility upon the members of corporations, would be to deter prudent men of business capacity and habits from becoming members thereof, and invite to such associations only irresponsible men without business habits or character, would consider the public much less secure.

In framing laws under which persons may be permitted to associate to carry on the business of manufacturing, our care should not be to provide for large dividends, upon the capital to be invested. We should look primarily to the encouragement of industry. But this object can only be attained under laws that will invite the investment of capital. I regard this subject as among the most important that will claim your attention at the present session, and I feel entire confidence that you will find it no difficult task to devise such laws — not incompatible with the requirements of the Constitution — as will secure the union of capital and labor, and reasonably protect the public against loss.

In your fostering care of labor, as well mechanical as agricultural, I feel assured no legislation will be neglected that in your judgment may tend to cultivate a due appreciation of its elevated character and enlarge the estimate of its respectability.

The fact that honorable distinction does not depend upon our occupation or profession, is better known and appreciated by those who have seen more years, than by young men just entering upon the active duties of life; and a false estimate of the character of manual labor induces an undue proportion of young men to engage in professional and mercantile pursuits.

In the discharge of the important duties that you have assumed as the representative of a great people, the inquiry whether the establishment of schools, in which agriculture and mechanics shall be scientifically and practically taught, will not tend to elevate the standard of labor, it is respectfully submitted, may properly occupy a high place in your deliberations.[6]

I communicate herewith a statement in compliance with the requirements of the last clause of the "fifth" section

[6] A general law for the organization of corporations for manufacturing, mining, mechanical or chemical purposes, chapter 40, was passed on the 17th of February.

of the "fourth" article of the Constitution, concerning "reprieves, commutations and pardons."

During the past year, five persons have suffered the extreme penalty of the law in this State, for the crime of murder. It will be seen by this statement, that two others who had been sentenced to death for the same crime, have had their punishment commuted to that of imprisonment in the State prison for life.

It will also be seen that during the same period, of the convicts imprisoned in the several State prisons, pardons have been granted to one hundred and one; and that of the persons confined in the local prisons, under sentence, pardons have been granted to twenty-five.

The section of the Constitution to which I have referred, evidently contemplates that some provision will be made "by law relative to the manner of applying for pardon." The evidence by which these applications are sustained is almost entirely *ex parte;* but notice is now given to the district attorney of the county where the convictions were had, of the pendency of the applications respectively, and time given to him to resist in any form that he may think his duty requires.

I sought early to establish some general and well defined rules to govern the exercise of the pardoning power, but in this I have been entirely unsuccessful, and have been compelled to dispose of each case, in respect to the particular circumstances, as disclosed by the information furnished. It is therefore to be expected that this duty will, in some instances, be improvidently discharged, but this consequence seems to be incident to the power conferred, and I am unable to recommend any legislation which, in my judgment, will provide against occasional imposition and improvidence.[7]

[7] Governor Young's suggestion was adopted the next year, 1849, when the procedure in pardon cases was prescribed by chapter 310, passed April 10. This subject was subsequently included in sections 692–8 of the Code of Criminal Procedure.

I think it may well be doubted whether our laws in respect to the length of the time that persons are imprisoned in the State prison, are not too severe under convictions for first offences. From the best information that I have been able to obtain from those who have had the care of persons confined for crimes, a much shorter term of punishment than that now prescribed by law, would furnish, in most instances, sufficient time for reflection and for forming resolutions of amendment; and he who is not reformed by a comparatively brief confinement, is not to be improved by that kind of punishment, and probably by no other. If he is longer kept in prison, the community may be protected to that extent, in so far as it deprives him of the opportunity to commit crime during that period; but it is believed that it does not tend to secure reformation. Where, however, persons have suffered for a reasonable time imprisonment in a State prison, and after being permitted to go at large, engage again in the commission of crime, reformation is rarely to be expected, and society can only be protected by perpetual imprisonment. This last is a general rule, and subject, like all others, to exceptions, and those exceptions are believed to be proper subjects for executive clemency.

The State Prison at Clinton was established by a law of the first of May, 1844, and prior to the 30th of September last, there had been appropriated for its construction and support, at different times, one hundred and fifty-five thousand dollars, all of which had been expended, and there was on that day a balance against the State of eight hundred and one dollars and twenty cents.

On the 10th day of December last, there was appropriated the further sum of twenty-five thousand dollars, making the aggregate of all of the appropriations on account of that prison $180,000.00

The whole amount that has been drawn from the Treasury is	176,959.64
Leaving a balance in the Treasury of...	$3,040.36

Under an act of the 13th of May, 1846, there has been drawn from the Treasury by the Mount Pleasant State Prison during the last year, the sum of.....	$7,100.00
There was received by the prison during the year, from all other sources.....	65,961.14
Making the whole amount received by the prison during the fiscal year ending 30th September, 1847	$73,061.14
There was a balance due from the prison to the State on the 30th of September, 1846, of.	1,075.12
Which added to the last mentioned sum makes an aggregate of	$74,136.26
The whole amount of expenditures for the year ending the 30th September, 1847, was.	73,303.59
Leaving a balance due the State of.....	$832.67

There was due from the Auburn prison to the State, on the 30th of September, 1846, being an excess of revenue for the preceding year, over and above expenditures, the sum of...	$17,798.09
The receipts during the year ending 30th of September last, from all sources, were.....	53,054.89
Making an aggregate of.....	$70,852.98
The expenditures for the same period were..	52,625.36
Leaving a balance due the State of.....	$18,227.62

Under the act of 8th of May, 1846, the "House of Refuge for Juvenile Delinquents in Western New York," has been located at the city of Rochester. A building has been erected and will be completed the ensuing spring. Early information will be laid before you showing the expenditures that have already been made, and the aid that will hereafter be required of the State.[8]

For several successive years, the legislative power of the State has been invoked to enact laws touching the relation of landlord and tenant, under the leases in perpetuity, or for life or lives, or for a term of years not less than sixty, and such laws have been passed from time to time for the protection of persons and property, as have been demanded or suggested by that peculiar condition of things that has not been inappropriately denominated "the Manor excitement."

It is believed that more than eighteen hundred thousand acres of land are still held in this State under these leases, containing annual reservations of rent, and in some instances of services and quarter sales, and that a population of more than two hundred and sixty thousand people reside upon lands thus held.

Many of the tenants, controverting the titles of their landlords, or denying the validity of the reservations in the leases, have, at short intervals, for several years refused to pay rent. Associations have been formed having for their object mutual protection against what they declared to be the unlawful demands of their landlords. Some of the tenants, yielding to the strong current of excitement, have resisted the execution of process by force; and while engaged in such unlawful resistance, high crimes have been committed, of which the judicial tribunals of the country have taken cognizance. As in all other cases of a similar character, the perpetrators of violence and crime were not the only sufferers. The public, not discriminating as to

[8] Chapter 206, passed April 10, appropriated $25,550 for the Western House of Refuge at Rochester, to be used for various specified purposes.

persons entertaining the same sentiments as to the legal rights of the tenants, have pronounced them all equally guilty, and hundreds of farmers who had committed no other crime than that of believing their landlords could not legally demand of them the payment of rents, were declared, by an indignant public, to be "robbers and assassins."

Although in the immediate vicinity of these acts of violence, persons have been found, who, while cheerfully lending their aid to enforce the execution of the laws, would not confound the guilty with the innocent, yet in parts of the State remote from these scenes of violence, and in other states, the true condition of things has been but imperfectly understood.

It is not my intention in this communication to consider this matter in detail, but now that harmony is entirely restored, and it is believed that there may be found among these farmers as many men who feel a deep interest in sustaining the laws as among the same number of citizens elsewhere, I feel impelled by a sense of duty which I will permit no consideration personal to myself to deter me from discharging, to ask you to consider carefully and without prejudice to their rights or the rights of the landlords, the condition of the people to whom I have referred.

The history of this tenantry is familiar to you, and it is the part of wisdom to judge of the future by the past. The principle which has been so often asserted, that these tenures are not in harmony with our institutions, exists no longer in mere speculation. It has received the sanction of the constitution of the State, and is now a part of its fundamental law.[a] If the causes of irritation which have at intervals disturbed the peace of those parts of the State, where these lands are situated, are not removed or mitigated, is there not much reason to fear that the scenes of 1811 and 1813, and of 1839 and 1845, will again be re-enacted?

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[a] Const. 1846, art. 1, §§ 12, 14.

That policy which teaches reliance upon a resort to the rigor of the criminal law, to punish offences that a wise forecast would prevent, or to enforce obedience to laws, which by judicious modification would enforce their own execution, I feel assured, will not receive your sanction. It is the first duty of government to enforce a strict observance of the laws, and to punish their infraction with unshaken firmness. If it should be found at any time that they are not adapted to the wants and interests of the people, for the government of whom they are made or provided, they should be amended or repealed; but so long as they remain the laws of the country, they are to be enforced, whatever their character, or however they may affect individuals or communities. But this is not the only obligation that rests upon government. While engaged in enforcing obedience to the laws, a high duty devolves upon it to seek out and remove any causes of discontent that may exist among its people. I will not suppose it possible, that in bringing this subject to your notice, I shall be regarded as giving countenance to legislation affecting, or that may assume to affect private rights or impair or weaken the obligation of contracts. The great object of the institution of government, is the protection of the rights of persons and property, and that government which fails to accomplish this object, is utterly worthless, and you do not need to be informed that enactments, which seek to disturb or divest private rights that have put on legal forms, are wholly inoperative.

It is believed that one of the fruitful sources of disquietude among these tenants, is the apprehension that the landlords have no title to the lands, and that, after paying rents and making improvements for a long series of years, they may, in virtue of a superior title to that under which they hold, be ejected from their possession. All persons who have had the care of large tracts of land, can testify to the facility with which reports unfavorable

to the title can be put in circulation, and to the mischievous influence of such reports when unfounded.

This apprehension that the title to the lands, which we are considering, is invalid, has brought to the Legislature, from time to time, applications for the passage of a law requiring the landlords, in actions to be brought by him against his tenants, to prove that he had a good paper title to the lands at the time the lease under which the tenant holds, was executed. In support of these applications, they have stated, and correctly, too, that by the law as it now exists, the tenancy itself, is evidence of the landlord's title, and that while in possession, they are not permitted to give evidence of its invalidity; and that if they abandon the lands, they have no title to assert in themselves except such as is derived from the defective title of their landlords, which they are seeking to defeat.

They also say, and with equal truth, that as the laws now are, their possession, and that of their ancestors, as tenants, in cases in which it has been continued for a sufficient number of years, enures as a title to their landlords as effective as against all claimants, other than the government, as the most perfect paper title; and they ask that the laws in this particular may be changed.

My opinions as to the propriety of such legislation were early formed, and fully expressed at a former period, when occupying a responsible office — that of a representative of a highly intelligent constituency in the popular branch of the legislature of this State. In the absence of laws governing the acquisition of property, there could be no titles, and he who acquires title to property in any of the ways known to the law at the time of its acquisition, is entitled to be protected in its enjoyment, and no action of the government can divest him of his interest, except the exercise of that extraordinary attribute of sovereignty, known as the "right of eminent domain," by which private property is taken for public use. It therefore follows

that he who has acquired title to land by having been in possession by himself or by those holding under him, as tenants, for such a term of years, as the laws of the country declare shall work a title, is just as much entitled to be protected in its enjoyment, as he who is enabled to trace his paper title to the common source. Legislation which can be subjected to the suspicion of assuming to weaken or impair, however slightly, the title to lands, cannot be too carefully avoided, and inasmuch as that which is sought by the tenants in this respect, is obnoxious to that charge, and would be wholly inoperative, I have not been able to bring myself to its support.

The object to be attained by the tenants is the ascertainment of the title of their landlords; and this you have ample power to effect without offending in the smallest particular against the laws that govern the rights of property, or against those equitable obligations which the State has so often recognized, in cases where it has had the legal title to lands, in which others are equitably interested.

In actions, to be brought by the State, involving the title to lands, the obstacles that are thrown in the way of private persons in its investigation, would not be encountered; and the adjudication would be entirely conclusive, and should, and it is believed, would, be entirely satisfactory to the tenants. If an action or actions of ejectment shall be brought by the State, in such case or cases as you may in your wisdom prescribe, and be fairly tried, the State will have discharged a duty which, in my judgment, it owes to the importance of the subject and to the interest as well of the landlords as of those holding under them in the character of tenants and purchasers. It is difficult to understand why the most sensitive holders of large tracts of land should feel any alarm at the prospect of such action, on the part of the government. The confirmation of their titles cannot fail to render essential service, in allaying irritation and disquietude, and hence increasing the value

and productiveness of their lands; and I am quite sure it will not be supposed that the State will engage in such an enterprise for the purpose of enriching itself.

The general current of her action in regard to escheats, since the formation of the government, furnishes the surest guaranty of her justice and magnanimity; and if it shall be found that the legal title, to any of the lands for the recovery of which any such prosecution shall be instituted, shall be in the State, she will cheerfully release the same to such just claimants as may be equitably entitled to the lands. In such cases, the State, in divesting itself of the title, would possess the power, and it is not doubted, would exercise it, to protect every equitable interest that should be found to attach to the lands.

I will only add in this connection, that while I should regard every attempt, on the part of government, to embarrass or restrain private acquisitions, as an unwarrantable and despotic assumption of power, I cannot doubt that it is the duty of government, in disposing of its public domain, to confine the sales, in so far as is practicable, to small parcels and to actual settlers.[9]

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[9] In the Assembly this part of the Governor's message was referred to a select committee which reported a resolution recommending that the Attorney General investigate the manorial titles, "and if in his opinion the title of the present claimants may be justly questioned, and the right of the State to such lands, or to any part of the same be established, according to law, that he take such measures, either by suit at law or any other proper proceedings, as will test the validity of such titles or claims." The resolution was adopted by the Assembly on the 6th of April, and by the Senate on the 10th. Later in the same year the Attorney General brought an action of ejectment to test the validity of the Van Rensselaer title. The case finally reached the court of appeals, where it was decided in December, 1853, People v. Van Rensselear, 9 N. Y. 291. The Van Rensselaer title was sustained, and it was held among other things that "royal letters patent granting lands in the Province of New York, are not void by reason of their conferring manorial privileges and franchises upon the patentees, but that such grant of manorial privileges, if it were unauthorized, would not avoid the grant of lands in the same letters patent." It was also held that the Dongan patent of 1685 was confirmed by the colonial statute of 1691, which ratified all prior patents.

Under the new Constitution, I think it is now quite apparent that the Judiciary, with wise statutory enactments, will be eminently successful. Much has been done by your predecessors in providing for its organization, but under a new system, experience will suggest, from time to time, the necessity for further enactments.

The power to refer equity causes, has not yet been conferred, and references are now in effect submissions to arbitration, and there is no power in the court to correct errors, if any, in the reports made or to be made by such referees or arbitrators, and immediate legislation, to provide for this omission, seems to be demanded.

A proposition was submitted to the last Legislature to provide by law for standing referees, but I am inclined to think such legislation is in conflict with so much of the Constitution[b] as abolishes masters and examiners in chancery.[10]

In my message at the opening of the last session, I recommended such a practical division of labor among the judges of the Supreme Court, as would designate one of the judges in each district to hold equity courts, leaving the common law duties to be discharged by the others, and I respectfully renew the recommendation. Out of the first district, the force, after detaching one judge, will, I think, be found amply sufficient for the discharge of the common law duties, and if we except that district, I cannot doubt that a single judge, by holding two equity courts in each county in this district annually, will hear and decide every cause in readiness.

A liberal system of voluntary exchanges by the judges of the several districts, is doubtless unobjectionable, but I have been unable from the beginning, to understand why

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[b] Const. 1846, art. 14, § 8.

[10] References were provided for by sections 225 and 226 of the Code of Procedure, chapter 379, passed April 12, 1848.

This act was sustained in *Anonymous* (1848), 1 N. Y. Code Rep. 49.

each judge should be required to divide his time among the several districts, as required by the judiciary act of the 12th of May last. After hearing arguments, the judges must necessarily remain together for deliberation, and to prepare written opinions, and to judges residing remote from each other, this detention is matter of great inconvenience, and the effect of such inconvenience can scarcely, I apprehend, fail to render their deliberations hasty and unsatisfactory. Besides, the effective force of the court is diminished by the length of time occupied in traveling. A judge can much easier and much better discharge the duties of the place after he has become familiar with the habits of the people where his services are required, and with the class of questions that there arise. And you are respectfully requested, in your deliberations touching the judiciary, to consider as to the propriety of making amendments in conformity with these suggestions.

By a communication from the Secretary of War, under date of May 19, 1846, my predecessor was requested to cause to be enrolled and held in readiness, to be mustered into the service of the United States, seven regiments of infantry.

A requisition was subsequently received for one of said regiments to proceed to California, and in obedience thereto, the 7th regiment, under command of Colonel Jonathan D. Stevenson, sailed from the harbor of New York in the month of September, 1846. From this regiment nothing official has been received since its departure.

In the month of November, 1846, the Secretary of War made a requisition for another regiment from this State, and the 1st regiment was mustered into the service of the United States, and sailed for Mexico in the month of January last, under the command of Colonel Ward B. Burnett.

By the report of the Adjutant General, to be forthwith transmitted to you, you will be furnished with all the official information possessed by this department, in relation to

the two regiments mentioned, and also to the military condition of the State.

The war with Mexico has imposed new and delicately interesting duties upon you. It may, and probably will, in its progress, claim further sacrifices from this State, and I rely with the utmost confidence upon your readiness, as the representatives of a gallant and patriotic people, to discharge, with alacrity, any duty that may be cast upon you.

In the Legislature of this State, in 1846, when the first intelligence was received that American blood had crimsoned the waters of the Rio Grande, upon a proposition to appropriate money for the enrolment of troops, in expressing what I then believed to be my duty as a member of that body, I said: "That our country is in a state of actual war with Mexico, none can doubt. The causes of that war are to me, now, unimportant. All here know that, from the first, I was opposed to the annexation of Texas; but that is now a matter foregone. Texas is now bone of our bone and flesh of our flesh, and they who invade any portion of that country, invade the United States; and I will as soon vote for the enrolment of troops to protect the soil of Texas as to protect the spot on which I now stand. Whether the conduct of the government, in ordering our army to be marched into that country, has been such as it should be or not, is also a foregone conclusion. Our country has been invaded and the blood of our citizens has been shed, and I will sustain that country, and those citizens, against a foreign enemy, at all times, and under all circumstances, right or wrong." Although these impulsive suggestions were naturally consequent upon the receipt of intelligence that the blood of our people had been shed, such impulses, in matters of this description, may generally be trusted; and I said nothing which, upon mature consideration, I do not feel it my duty to reiterate.

I do not, however, mean to be understood as saying, nor can such an inference be fairly drawn from anything I have

said, that it is unimportant, in a war with a foreign country, that the government should be right. It has everywhere been truly said, that war is among the direct calamities that can befall a nation, particularly if its people have felt the subduing and refining influences of christianity and civilization, and can only be resorted to for just cause, and be justified by a high regard for the integrity and honor of the nation. National honor is not merely etherial — the echo of high sounding words. It is intimately connected with our well-being, the power of self-preservation, and indeed our very existence as a nation.

The power to declare war is vested in the Congress of the United States,[c] and when once engaged in war, either under a declaration by Congress, or into which we have been involuntarily plunged by the aggressions of a foreign government, the power to make peace rests with the President of the United States and the Senate;[d] and that doctrine which teaches obedience to municipal laws, whatever their character, until they are modified or repealed, requires of us as citizens of the United States, and in our corporate capacity as one of the members of the confederacy, to come up to the help of the government against a "foreign enemy," however we may have been involved in the war, and whatever its causes or objects. Such is our condition now. We are in a state of war with Mexico, and in its progress the country has responded to the demands of patriotism with a spirit and zeal as pure and ardent as that which burned in the bosoms of those who fought the battles of the Revolution. Under officers whose names will live as long as the knowledge of letters by which their heroic deeds have been recorded, our armies have achieved a series of the most brilliant victories known to the history of ancient or modern times.

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[c] U. S. Const. art. 1, § 8, clause 11.

[d] U. S. Const. art. 2, § 2, clause 2.

The country, always indisposed to war, would receive with joy, intelligence of an honorable peace. But to render a peace honorable, I think she would demand, and has a right to require, that it shall be accompanied with such indemnity as upon the page of history will be evidence of an acknowledgment by Mexico, of the superiority of our arms. But the character and extent of such indemnity, I may not speak in this communication.

With the return of peace, will come a season for calm deliberation and searching inquiry. The causes, the conduct and results of the war, may be then properly and usefully investigated. But until our enemy shall have been subdued, discussions involving collisions of opinion at home, cannot fail by exciting false expectations in Mexico, to embarrass negotiations for peace. I confidently trust, therefore, that such discussions will not be allowed to distract your deliberations. So long as there is an enemy in the field, I feel assured that we shall look only to the honor of our flag.

How far legislation by you may be demanded, resulting from the war with Mexico, I apprehend, cannot at this time be determined. Ohio, and I believe others of the states, have made appropriations to meet the expenses of soldiers incurred after enlistment and before being mustered into service, looking to the General Government for reimbursement. If there shall be a further requisition upon the State for troops, and provision shall not be made by the federal Government to meet the expenses mentioned, I respectfully submit that it will be your duty, as I doubt not it will be your pleasure, to make the necessary appropriation.

Before taking leave of this subject, I respectfully invite your attention to some fitting and proper legislation in regard to the remains of the brave men from this State who have fallen in Mexico. The New York troops have been found in the thickest of the fight, and where the battle raged most fiercely, vieing with each other in "deeds of

noble daring " on every field, from Vera Cruz to the city of Mexico. It is one of the offices of Christian civilization to cultivate a kindly and delicate regard for the remains of deceased friends. Hence the emotions that are felt as we linger in silence among the resting places of the dead.

It has been suggested that legislation in this respect should be confined to the officers, inasmuch as it would be difficult, if not impossible, to identify the bodies of soldiers belonging to the troops from this State. I think, however, it will be found that in most cases they have been buried separate from other dead. If so, a small appropriation would effect this much to be desired and humane object.

The bodies of many of our officers of the higher grades have been brought home by their relatives, or by the kindness of friends, and I respectfully recommend that provision be made by the State for bringing back the remains of the residue of the soldiers and officers, that such of them may be delivered to their kindred and friends as may be ready to receive them, and that for the residue of the gallant dead, a common resting place may be provided, and if not too difficult to be obtained, in ground made classic by revolutionary scenes.

In conclusion, I have only to express the hope, that in the discharge of the duties to which I have referred, and all others pertaining to your representative character, you will be cheered by the smiles of Heaven, and enlightened by Divine wisdom.

JOHN YOUNG.

Albany, January 4, 1848.

SPECIAL MESSAGES.

January 31. To the Assembly: Transmitting the annual report of the Adjutant General.

February 16. To the Assembly: Transmitting the annual report of the Commissary General.

April 10 and 11. To the Legislature: On the 29th of November, 1847, the Legislature adopted a resolution in-

viting General Zachary Taylor to visit New York while in the United States on an expected leave of absence of six months. Governor Young communicated the resolution and invitation to General Taylor, and on the 10th and 11th of April, 1848, transmitted to the Assembly and Senate respectively, the following reply:

BATON ROUGE, LA.
February 29th, 1848.

His Excellency JOHN YOUNG,
Governor of New York.

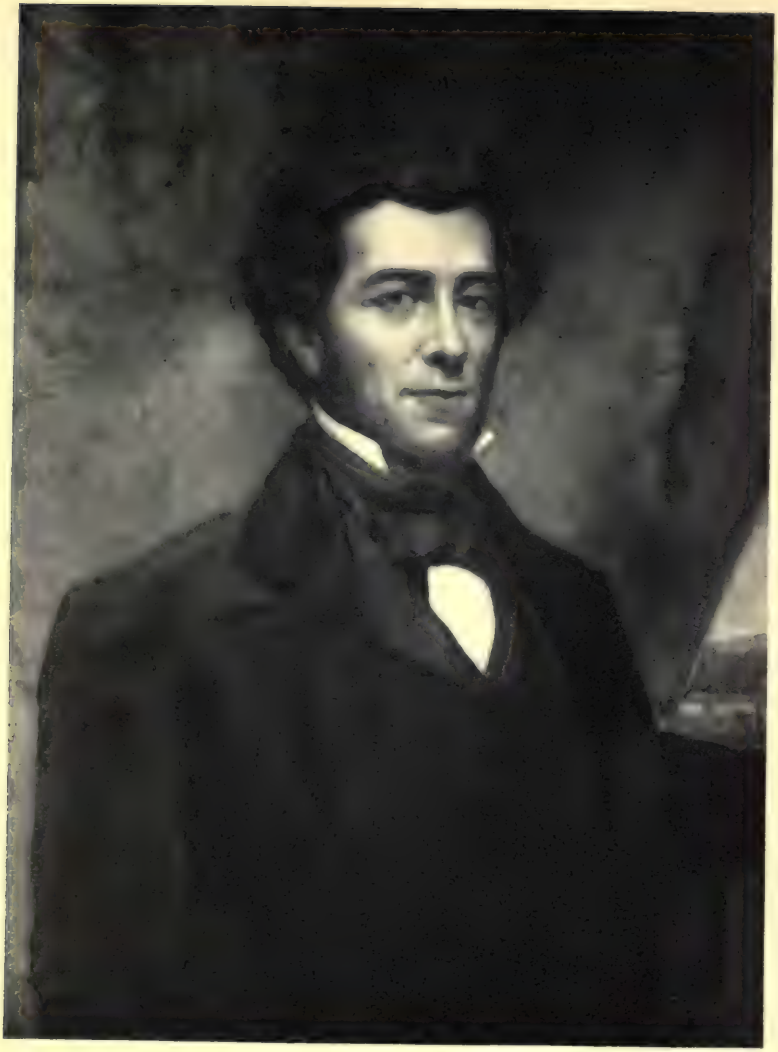
Your Excellency's communication of the 25th ultimo, conveying to me a copy of the resolutions, passed by the Legislature of New York, on the 29th of November last, has been duly placed in my hands by your Excellency's aid, Colonel Van Alen.

I greatly regret to inform you in reply, that while I had entertained the flattering invitation extended to me in these resolutions, with the high consideration due to the distinguished source from which it has emanated, I am yet under the painful necessity of declining it. My private interest in this quarter, and professional considerations of some weight with me, forbid my leaving this vicinity for so long a time during my present leave of absence.

I beg, however, that your Excellency will take a suitable occasion of expressing to the Honorable Legislature of your State, my profound acknowledgments for the unmerited honor conferred upon me, and of assuring them, that could I yield with propriety to my inclinations, I should hasten at once, to offer these acknowledgments in person.

With sentiments of high esteem,
I have the honor to be,
Your Excellency's obt. serv't.
Z. TAYLOR.

April 12. The Legislature adjourned without day.



J. Hamilton Lewis

HAMILTON FISH, Governor.*

ANNUAL MESSAGE.

FELLOW CITIZENS OF THE SENATE AND OF THE ASSEMBLY.—The commencement of another year has brought you together to discharge the high trust with which you have been commissioned by the people of this State, of enacting laws for the government of nearly three millions of freemen. Before you enter upon that important duty, permit me to congratulate you upon the circumstances under which you meet. The year which has just closed, has been one of unusual prosperity to the people of our State. The Almighty Ruler of the Universe has been pleased to vouchsafe to us a continuance of his many blessings; the influences of religion and learning have been extended; the labors of the husbandman have been crowned with the rewards of an abundant harvest; the mechanic and artisan have enjoyed the well-earned return of their honest industry; commerce and manufactures have continued to engage the enterprise and the intelligence of a large portion of the people, while the Arts and Sciences have gradually spread their influence and are developing new sources of wealth and prosperity. Prominent among the benefits which the past year has brought, is the restoration to our country of the blessings of Peace. While other nations have been threatened with famine, or ravaged by pestilence, or convulsed by foreign wars, or by civil commotions, our thanks are due to Almighty God for his signal blessings conferred upon our country. We enter, then, upon the duties of our respective offices, surrounded by these evidences of the wel-

* Hamilton Fish was the first Governor elected under the third Constitution. See note, *ante*, p. 363.

fare of our people, as individuals, and of their prosperity as a Commonwealth.

The public confidence in the credit of our State was favorably exhibited by the terms on which the loans, authorized by the act of the last Legislature, "to provide for deficiencies in the Sinking Fund under the provisions of article 7 of the Constitution," were taken. A part of these loans were taken at par for stocks bearing five and a half per cent. interest, redeemable in the year 1855; the balance was issued at six per cent. interest, also redeemable in 1855, for which a premium, averaging 2.80 per cent. was obtained.

The entire debt of the State at the close of the last fiscal year, and the annual amount of interest payable thereon, was as follows:

	Amount of Interest.	Amount of Debt.
General Fund Debt.....	$336,044.85	$5,989.693.32
Canal debt	905,037.54	16,674,898.91
do		38,751.00
Total.....	$1,241,082.39	$22,703,343.23
In addition to this, there is a contingent liability of the State, arising from the loan of its credit to certain corporations, (which have hitherto paid the interest,) amounting to		1,233,905.60
Making the entire outstanding debt, both direct and "contingent," on the 30th Sept. last.....		$23,937,248.83
There was on hand, on the 30th Sept. last, a surplus of the Canal debt Sinking Fund, carried to the credit of the next fiscal year, available toward the payment of the above mentioned debt of	$115,953.40	

There was a deficiency in the General Fund Debt Sinking Fund, of $1,008.97, which had been advanced from the revenues of the General Fund	$1,008.97	
		$114,944.43
Making the total liability of the State on the 30th of Sept. last, above the means on hand for its redemption		$23,822.304.46

The revenue of the State for the last fiscal year was as follows:

I. General Fund. Surplus revenue the 30th Sept., 1847	$111,665.93	
Permanent revenue, exclusive of the constitutional appropriation of $200,000 annually, from the surplus of the canal revenues	188,030.60	
State Tax	238,303.74	
Miscellaneous and temporary receipts	20,065.14	
Sundry receipts, for which previous advances had been made, or which were to be withdrawn subsequently from the Treasury	71,823.83	
		$629,889.24
II. Canal Revenues, tolls including penalties, &c	$3,153,614.24	
Rent of surplus waters	3,354.14	
Interest on current canal revenue	47,101.78	
		3,204,707.16
Total revenues		$3,833,959.40

The payments out of the Canal Revenues above mentioned, amounting to.....		$3,204,070.16
Were as follows:		
Expenses of collection, superintendence and ordinary repairs.....	$855,850.64	
Appropriated and set apart by Article 7 of the Constitution—		
I. Towards the Canal Debt Sinking Fund.....	1,300,000.00	
II. Towards the General Fund Debt Sinking Fund.....	350,000.00	
III. To defray the necessary expenses of Government...	200,000.00	
		$2,705,850.64
Leaving the remainder of the revenues		$498,219.52

which sum is applicable to the completion of the Erie Canal Enlargement, the Genesee Valley and the Black River canals.

The canal tolls (including the tolls received from railroads) during the season of navigation, for the year 1848, amounted to $3,459,690.29. Compared with the corresponding period during the year 1847, this amount exhibits a decrease of $216,381.83. The tolls of the year 1847, were greatly augmented by reason of the extraordinary demand for provisions and agricultural products for exportation, to meet the necessities arising from the failure of the crops in many parts of Europe. From this cause, the tolls for the past season were less than those of the preceding year, yet as compared with all other years, they show a steady and rapid increase.

The enlargement of the Erie canal and the completion of the Genesee Valley and of the Black River canals are

progressing as rapidly as the limited appropriations to those objects, under the Constitution, will permit. Previous to the resumption of the public works in May, 1847, about 98 miles of the enlarged canal, and 328 structures, had been brought into use at an expense of nearly $10,000,000. The enlargement will embrace 980 structures, upon the entire length of the canal. At the opening of navigation next spring, there will be 113 miles of the canal, and 409 structures in use; in addition to which, a considerable amount of work will have been done on other portions of the canal, and on structures not then complete.

The entire length of the Black River canal will be 44 62-100 miles, exclusive of 42½ miles of slack water navigation, on the Black River. Contracts have been made, covering nearly all the work necessary to complete 35 miles of this canal, which, it is thought, will be brought into operation in the spring of 1850.

On the Genesee Valley canal, 52 miles are now in use; there being 66½ miles not completed. A large amount of work is under contract between the present termination at the Dansville side-cut, and the Canadea feeder, a distance of 36½ miles. The Commissioner in charge hopes that the canal may be ready for navigation to this latter point by the spring of 1850.[1]

The rapid augmentation in the business of the canals has produced a corresponding increase in the number of boats employed in their navigation. According to the Register in the Auditor's office, the present number is 4,743, being

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[1] Chapter 216, passed April 5, appropriated $140,000 for work on the Black River canal and Erie canal feeder. Chapter 219, passed April 5, reappropriated $50,000 for the Black River canal, which had been originally appropriated by chapter 260, Laws of 1847.

Chapter 217, passed April 5, appropriated $920,000 for the Erie canal enlargement.

Chapter 227, passed April 5, reappropriated $128,000 for the Genesee Valley canal, which had been appropriated in 1847, and chapter 229, passed April 5, made a further appropriation of $140,000 for the same canal.

an increase of 522 within one year. The magnitude of this indispensable appendage to our internal commerce, may be estimated from the fact, that the boats, if placed in line, would occupy nearly seventy miles of the length of the canals. The establishment of safe and convenient basins for the accommodation of such a mass of vessels, with the necessary appliances for the cheap and expeditious reception and discharge of their cargoes, has become a matter of public concern. Under the authority of recent laws, extensive basins have been commenced at the expense of the State, in the city of Buffalo; while the commodious basins constructed by local enterprise in the city of Albany, and by the Atlantic Dock Company in the harbor of New York, have been eminently serviceable in securing from injury this large fleet of boats, which our system of internal navigation has called into existence.[2]

The revenue derived from the three funds which are either entirely or principally applied to purposes of education, were on the 30th September last, as follows:

	Common School Fund.	Literature Fund.	U. S. Deposit Fund.
Capital.....	$2,211,475.14	$265,806.78	$4,014,520.71
Balance in Treasury 30th Sept. 1847.....	$124,947.16	$18,204.69	
Receipts during the year	117,220.25	18,183.61	$251,577.24
Appropriations from the income of the U. S. Dep. Fund.	165,000.00	27,000.00	
Total receipts	$407,167.41	$63,388.30	$251,577.24

[2] Chapter 200, passed April 4, appropriated $121,462.63 with interest from 1843, to reimburse the city of Albany for expenses incurred in constructing the Albany Basin.

Payments during the year	$284,902.00	$43,532.66	$249,634.48
Balances of revenue in the Treasury 30th Sept., 1848	$122,265.41	$19,855.64	$1,942.76

I respectfully refer you to the reports of the Comptroller and the Commissioners of the Canal Fund, which will present a detailed statement of the financial statistics of the State.

The annual report of the Inspectors of State Prisons will present to you the state and condition of the prisons, and the receipts and expenditures of money during the year, with other details of the important interests with which they are charged.

I communicate herewith, in conformity with section five of article four of the Constitution, a statement of the reprieves, commutations and pardons, granted during the past year, by my predecessor.

Reports of the Adjutant General and Commissary General, which will soon be transmitted to the Legislature, will furnish full information on the subject of the militia, and the arms and other military material of the State.[3]

The common school system of the State continues efficient in the discharge of its important objects. The number of organized school districts, reported during the past year, was 10,621; and the number of children taught in the

[3] Chapter 254, passed April 7, amended the act of 1847, chapter 205, relative to the organization of the first division of the militia. Chapter 307, passed April 10, amended the general militia law of 1847, and contained new provisions on the same subject. Chapter 316, passed April 10, provided for the appointment of brigade inspectors.

common schools during the year was 775,723, being an increase of 27,336 over the number reported the preceding year. The number of unincorporated and private schools reported was 1,785, in which 32,256 children were taught; making the aggregate of 807,979 children, who receive instruction in the common and private schools of the State. The amount of public moneys paid for teachers' wages, during the year, was $639,008.00; and the amount paid on rate bills for teachers' wages was $466,674.44, being an aggregate of $1,105,682.44.

Intimately connected with the success of our institutions of learning, is the establishment and support of libraries for the use of the public. The liberal and far-seeing policy of the law of 1838, provided for the formation and gradual increase of libraries in each of the school districts of the State. During the past year $81,624.05 have been expended by the State for this object. Upwards of one million three hundred thousand volumes have already been distributed, carrying the means of mental culture into every portion of our widespread territory. This beneficent legislation of the State, has recently been seconded by a signal example of individual liberality on the part of one, who, though not a native of our land, had realized in his own career the benefits of the full and fair participation in the privileges which the liberal policy of our institutions extends to all, without regard to the place or the circumstances of birth. John Jacob Astor, a native of Germany, who lately died at an advanced age, in the city of New York, by his will, has devoted the large, and, in this country, unprecedented amount of four hundred thousand dollars, to the foundation and perpetual support of a library for the free use of the public. The trustees to whom the management of this munificent donation has been committed, will, under the directions of the will, apply to the Legislature for an act of incorporation to render the management of the library

and its funds safe and convenient. I cheerfully commend their application to your enlightened encouragement. The foundation of such an institution, with its treasures of learning, cannot but be regarded as a striking event in the literary history of our State.[4]

From the representations made to me, I am led to believe that the restoration of the office of County Superintendent would be productive of good to the School system. One of the injurious consequences of its abolition, as I am informed by the Department, is, that the reports for which it depended wholly on those officers, are now greatly diminished in number, and that many of those received are so imperfect as to be of little value.

The report of the Executive Committee of the Normal School will show the condition of that most valuable agent in the cause of education. This school is doing a great and good work. It has ceased to be an experiment, and under its present judicious management, it is growing in the confidence of its friends, and attracting the interest of many who once doubted its practicability, or its usefulness.[5]

The limits of this communication will not permit any detailed statement of the various public charities of the State. Their annual reports will exhibit their prosperous condition, and their labors in the accomplishment of the benevolent purposes for which they were designed.

The number of patients in the State Lunatic Asylum at Utica, on the 1st of December last, was 495, which is about as many as can well be accommodated in the institution. During the six years of its operation, this Asylum has received 2,014 patients, of whom 814 have been discharged cured. Personal observation of this institution, during the past summer, enabled me to notice the neatness, method and excellence of its management.

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[4] The Astor Library was incorporated by chapter 1, passed January 18.

[5] An appropriation of $10,000 for completing the Normal School building in Albany, was made by chapter 50, passed February 24.

The Institution for the Deaf and Dumb, numbered among its pupils, in the latter part of November:

Beneficiaries of the State of New York	160
" " City of New York	16
" " State of New Jersey	8
" " Institution itself	10
Supported in whole or in part by their friends	29
Being a total of	223

As the institution has no permanent funds, except its investment in buildings, its existence depends upon the annual appropriations of the Legislature, from which it receives nearly three-fourths of its income. In company with the Superintendent of Common Schools, I attended an examination of some of the classes during the last summer. A more interesting exhibition of the excellence and benefits of a public charity, could not have been enjoyed.[6]

In the New York Institution for the Blind, there were, on the 4th of December, 135 blind persons, viz:

Supported and educated by the State of New York	104
" " " " New Jersey	7
" " " their friends	3
" " " gratuitously by the institution	1
Graduates employed as teachers and otherwise	20
Total	135

To complete the usefulness of this institution, an appropriation of $15,000 was made at the last session of the Legislature, providing for an asylum, where those who have finished the course of instruction, and acquired a

[6] Chapter 29, passed February 5, appropriated $15,000 to extinguish the indebtedness of the New York Institution for the Instruction of the Deaf and Dumb.

trade, may support themselves by their own labor. I learn that the contracts have been made, and that the building is commenced, and will be completed within the appropriation. This excellent charity is accomplishing its benevolent objects. It is second to none in the excellence of its management, or in the humanity of its design. It merits, and I trust will receive, the continued aid of the State.

In the New York Hospital, 3,178 patients have been under treatment, between the 1st of January and the 30th of November last; of whom 2,155 were discharged, cured. In the Lunatic Asylum at Bloomingdale, which is under the charge of the governors of the New York Hospital, there were 120 patients on the 1st of December last.

The annual fair of the State Agricultural Society, held at Buffalo in September last, is represented to have been equal to any which had preceded it; and exhibited the interest of our people, as well as their advancement, in those pursuits which the Society was intended to promote and encourage. This Society has heretofore made valuable contributions to the cause of agriculture, in several interesting volumes of its transactions. I understand that the report which it will present this winter, will contain more than the ordinary amount of interesting and valuable information.

The history of this State evinces that its Legislature has not been content to confine the exercise of its powers to the mere enactment of laws for the administration of the ordinary functions of government, or for the suppression of crime. Its canals, and other public works, its schools and institutions of learning, are proud evidences of a determination to promote the increase of its commerce and trade, and the moral improvement and happiness of the people, by acts of munificent, but judicious legislation. We have long recognized it as a high and holy duty of a civilized government, to provide for the general dissemination of learning — to foster the enterprise of its people — to de-

velop the resources of the State — to encourage its industry — and to secure to that industry its surest and most ample rewards. Much has been done to effect these ends. A noble fund has been provided, and our common schools and academies are sowing broadcast the seeds of learning. The higher branches of science and the arts have not been neglected — the endowments of the colleges and universities have generally been liberal — and the rich return of these institutions, in the advancement of good scholarship, of profound learning, and of liberal and lofty science, is the surest evidence of the wisdom of the past liberality of the State, and the strongest incentive to its future continuance.

I think the time has arrived when the State is called upon to make provision for the advancement of agricultural science, and of knowledge in the mechanic arts. Of late years, the science of agriculture has received much attention, and its influence, in combination with the practical labors of those engaged in the ennobling pursuits of husbandry, has lessened the toil and increased the returns of the tillers of the soil. Similar influences have produced similar results, with respect to the mechanic arts. If the wealth, and power, and independence of a nation, are to be estimated by its ability to supply, from within itself, its most essential wants, and from its abundance to minister to the wants of others, it is both wise and politic for the State to aid the advancement of those particular branches of knowledge more immediately bearing upon the pursuits of the great producing classes.

In this view, I cannot too strongly recommend the endowment by the State of an agricultural school, and a school for instruction in the mechanic arts. I would suggest an annual appropriation to be expended under the direction of the Regents of the University, for instructors in the several branches of learning connected with agriculture and the mechanic arts. The appropriation should be sufficient

to ensure the best talents, to test the utility of the plan, and if deemed expedient, its duration may, in the first instance, be limited.[7]

The Constitution of the State omits to provide for the contingency of a vacancy occurring in the office of Governor, pending a vacancy in the office of Lieutenant-Governor.[a] As every precaution should be taken to guard against a failure of the depository for the Executive power of the State, an amendment to the Constitution, to meet this omission, should be made.[8]

Your attention is also requested to the necessity of providing by law for filling vacancies in office.[b] Great inconvenience and injury to the public interests might result from an omission to exercise the power over this subject, which is confided to the Legislature.[9]

Much of the time of the State Legislature is now occupied with business of a local character, which might, with propriety, and advantage, be transferred to the Boards of

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7 The Legislature adopted a concurrent resolution providing for the appointment by the Governor of a board of eight commissioners, one from each judicial district "to mature a plan for the establishment of an agricultural college and experimental farm, and prepare a statement of the probable expense of such an institution, and a detailed account of the course of studies and plan of operations recommended."

a Const. 1846, art. 4, § 6.

8 A constitutional amendment was adopted at this session adding the speaker of the Assembly to the gubernatorial succession. The amendment was again adopted by the Legislature of 1850, and a bill for its submission was passed by the Senate, but it failed in the Assembly. The suggestion of Governor Fish as to the speaker was in effect included in the Constitution of 1894, article 4, section 7.

b Const. 1846, art. 10, § 5.

9 Chapter 28, passed February 3, contained general provisions relative to filling vacancies in office. The act was amended at the same session by chapter 46, passed February 17, by adding provisions relative to the removal of the general state officers, and for filling vacancies after such removal. The subject was afterwards included in the public officers law of 1892.

In People v. Keeler (1858), 17 N. Y. 370, chapter 28 of 1849 was held unconstitutional as to justices of the peace.

This act was sustained in Smith v. Levinus (1853), 8 N. Y. 472.

Supervisors of the several counties. A majority of the members of the Legislature can have but little personal knowledge of the merits of most of the local questions upon which they are called to act. A transfer of the power over these questions is in accordance not only with the theory of the Constitution, but with its express provision, and would bring the local legislation more nearly home to those directly interested in its results.[c] And while it would elevate the office of Supervisor, it would leave to the State Legislature a larger portion of its time for the consideration of subjects of more general bearing.[10]

I recommend to your consideration a modification of the Criminal Code. The punishment of crime should be certain, rather than severe. Long terms of imprisonment produce a crowded state of the prisons, which is made the justification of appeals to the Executive power of pardon, if it do not at times present a necessity for its exercise. In a popular government where every branch of the civil power is in a measure affected by public opinion, certainty cannot be attained unless the punishment which the laws prescribe, be in accordance with the prevailing sentiment of the community. That sentiment is undoubtedly opposed to a severe punishment. It frequently operates upon juries, to induce either an acquittal, or the conviction of a lesser crime, rather than a verdict which will be followed by a punishment beyond what the jury may deem adequate. However rigid the disposition of the individual vested with the power of pardon, the force of a sentiment strong enough to find its way into the jury box, will sometimes reach him, and open the door of the prison, before the expiration of the sentence. The certainty of punishment is thus sacrificed to the severity of the legal enactment. If this be correct, it suggests the propriety of abridging, in proper cases,

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[c] Const. 1846, art. 3, § 17.

[10] Powers of legislation on several local subjects were vested in boards of supervisors by chapter 194, passed April 3.

the terms of imprisonment. By the present laws, no person can be sentenced to the State Prison for less than two years. I think this minimum might be reduced to one year. And I recommend the substitution of a larger sum than the law now prescribes for the division between grand and petit larceny. Our former penal code placed the limit of petit larceny at twelve dollars and a half; but as the exchangeable value of money receded, it was extended to twenty-five dollars. The same reasons which induced this change more than thirty years since, seem now to demand a further extension.

In connection with this subject, I also recommend the enactment of some regulations relative to the manner of applying for pardons.[d] In the absence of any legislative provision on this subject, the applications for pardon become almost equal in number to the convictions.

It is not within the limit of my duty to suggest the nature, or the details of provisions which the Constitution has committed to the wisdom of the legislature; but in my view of the importance of restricting the exercise of this power, I cannot omit presenting the subject to your consideration. Under proper and judicious regulations, the number of applications for pardons will be greatly diminished; while the power can be exercised with greater discrimination and safety.[11]

The interest and the convenience of the public, as well as a regard for the rights of property, seem to call for a revision and alteration of the laws under which taxes, and assessments for local improvements are imposed, and their payment enforced. In the exercise of the power of taxation, or in delegating it to other, and local bodies, the legislature should use the utmost vigilance to confine this

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[d] Const. 1846, art. 4, § 5.

[11] Procedure in pardon cases was regulated by chapter 310, passed April 10, and was afterwards included in the Code of Criminal Procedure, sections 692–8.

severe attribute of sovereignty within the most rigid limits consistent with the public necessities. While the amount of the tax should be limited to the wants of the most economical administration of the government, the mode of its collection should have regard to the convenience of those who are to pay; and payment should be enforced in such manner as may most advantageously combine certainty with economy, and publicity of notice. Sales of land for unpaid taxes have hitherto been held at the seat of government, at irregular periods. I am aware that there has been strong objections, from those whose position and experience entitle their opinions to much consideration, to these sales being made to the counties within which the lands are situate. But I am not able to see sufficient force in these objections, to resist the arguments, based upon the convenience and the interest of the parties affected, in favor of transferring the place of sale to the respective counties. Many titles have been lost, and the hard earned savings of years of toil been swept away by means of a sale conducted at a distance, and without the knowledge of the party to be affected, for a tax imposed before the title had accrued. These sales, as now conducted, are sure to meet the attention of the vigilant, and of the wealthy land owner; while the inducements which they present of a high rate of interest, in case of redemption, and of still larger gains in case of an omission to redeem, attract the keen eyed and watchful speculator; but they are seldom brought to the personal knowledge of parties, whose only property consists of the lot of which they may be deprived by this remote, and to them not notified process. I trust that the Legislature can so regulate the transfer of the place of holding these sales, as to avoid the objections which have been made.

Under the present laws a very large amount of personal property entirely escapes taxation. I recommend such alteration as will distribute the burthen of taxation more

equally, and will reach personal property more effectually and generally.

The levying of assessments for local or municipal purposes is frequently exercised so arbitrarily, and so oppressively, that the power of the Legislature has often been invoked for its arrest and limitation. I cannot doubt that the Legislature ought to interfere in favor of the rights of property, against the too frequent abuse of this power. The authority under which these abuses are committed, is derived from the Legislature; and that body is therefore, in a degree, held responsible for its exercise by those upon whom it has been conferred.

A large number of claims against the State for damages on canal contracts, broken by the State, under the law of 1842, remain unadjusted. The State has already paid to contractors for their loss of profits, by reason of the suspension of the public works in 1842, the sum of $450,738.91, and awards amounting to upwards of $6,000, remain unpaid, by reason of the exhaustion of the appropriation to pay such claims. A further appropriation has become necessary.

Some of these unsettled claims amount to $30,000 or $40,000. They are decided by the Canal Board, which is also charged with the decision of all other claims under canal contracts, and of appeals from the awards of Canal Appraisers. This branch of its business, added to the other numerous and important official duties of the members of this Board, throws upon it an amount of labor beyond its ability to discharge. Delay inevitably results, and while the claimant is thus injured, the interests of the State are not properly secured, for want of adequate powers in the Board. There should be authority to dismiss a claim in default of its being brought to a hearing on an assigned day, and there should be some officer particularly charged to represent the State on the hearing of all claims for canal

damages. It has been suggested that the interests of the State, as well as the claimants, would be advanced by relieving the Canal Board of this portion of its duties, and giving the decision of all claims under canal contracts to a Commission, with adequate powers to protect the interests of the State. I present the suggestion to your consideration.

A communication will be presented to you, as I am informed, by the Canal Appraisers, showing the awards made by their Board. A large amount is yet due for awards made more than a year since, as well as for those more recently made. An appropriation will be necessary to meet these awards. The communication of the Appraisers will suggest some alterations in the powers and duties of their Board, which will receive your careful consideration.[12]

Much excitement has prevailed during the past year among the inhabitants of Richmond county, with respect to the location of the Quarantine buildings. For some time past the Hospital has been crowded with patients, suffering under malignant diseases; and during the last summer the yellow fever extended its ravages among the surrounding population. The grand jury of the county has presented the establishment as a nuisance, and has found bills of indictment against the officers of the State who have it in charge. A committee appointed by the last Legislature has been recently engaged in the investigation of the propriety and feasibility of selecting some other site for these buildings. I am not apprised of the facts which they have elicited, nor of the conclusion to which they have arrived. Their report will be laid before you, and will demand all the consideration due to the health and comfort of the citi-

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12 Chapter 232, passed April 5, appropriated $100,000 for the payment of canal damages which accrued prior to June 1, 1846, including awards and allowances made by the canal appraisers and other state authorities, and also $100,000 for awards which had been or might be made prior to the meeting of the Legislature in 1850.

zens, and to the important commercial interests so vitally concerned in the proper location of this establishment.[13]

The constant increase of the commerce of the port of New York has given rise to an impression that the emoluments of the health officer of that port, whose compensation is derived from fees dependent upon the number of arrivals, are far beyond the amount necessary to secure the most eminent services of the medical profession. An officer charged with the important duties of that situation, should be liberally rewarded, but if the generally supposed compensation of this officer be not greatly overrated, the amount of his emoluments is excessive. If a reduction be proper, it may be made to take effect from the expiration of the term of office of the present incumbent.

Long previous to the passage of the laws of 1847, the necessity was felt of reorganizing our system of legislation with respect to emigrants, and of placing the subject of emigration on a basis better suited to existing and prospective exigencies. The great migratory movements of the human race, which has gone forward, under one form or another, from a very early period of history, equalizing population, sowing along its path seeds of future strength and dominion, opening new fields for the arts and sciences, for religion and morals, founding new empires for freedom, and which in our days has had its chief direction from Europe to this country, had, of late years assumed a magnitude which made it a subject of primary importance in the State where its effect is first and most felt. Wasted by cruel hardships on his voyage, the emigrant was the prey of systematic frauds and extortion, even before his foot touched the shore of his long looked for land of promise and of refuge. Friendless and destitute, with few about him, except those whose interest it was to wrong him;

[13] Chapter 309, passed April 10, authorized a change of location of the quarantine buildings on Staten Island, and authorized the expenditure of $50,000 in connection with the change and the erection of new buildings.

having neither the means nor the knowledge where to bestow his energies beneficially to himself, or to his new country, a short and ineffectual struggle against his lot, made him the inmate of an almshouse, and the companion of paupers. This condition of things it was felt had existed too long, and if continued, would be a reproach to the civilization of our age, and to the humane spirit of our institutions, as well as a lasting injury to our State, which owes to emigration much of its prosperity and power. It became evident, then, that the State must no longer rely upon the efforts of county authorities, or of benevolent associations, but should itself assume the charge of a subject, in every respect so important, and that the immense annual emigration from Europe should be committed to a distinct department organized on a scale commensurate, not only with existing, but future necessities, and in such a wise policy as would render the emigration as beneficial as possible, both to the emigrant and to the community of which he comes to form a part.

During the session of 1847, a series of laws were passed, organizing, on a comprehensive and liberal basis, a board of Commissioners in the city of New York, with extensive powers, and making such provisions as appeared most conducive to the benevolent purposes in view. In the midst of the preliminary arrangements of this board, an emigration unprecedented not merely in numbers, but in destitution and disease, was poured in upon it, and added to the embarrassments inseparable from the organization of a system so extensive and so complicated. But it was the good fortune of the State, and of the emigrant, to find in the integrity and devotion of the gentlemen entrusted with the arduous and responsible duties of Commissioners, resources adequate to the emergency. The beneficial results already obtained, furnish evidence of the wisdom and efficiency of the system. It is stated that since the passage of the laws alluded to, upwards of three hundred thousand

emigrants have arrived at the port of New York, not one of whom has become a charge to any city or county in the State.

For further details of interest and value, your attention is directed to the annual report of the Commissioners to be rendered according to law, to the Legislature. In the nature of things, experience, and the practical working of the system must disclose further improvements, which, doubtless, the Board of Commissioners will suggest, and which will receive full consideration at your hands.[14]

The 7th section of article 8th of the Constitution, makes the stockholders in every corporation, and joint stock association for banking purposes issuing bank notes or any kind of paper credits, to circulate as money, after the first day of January next, individually responsible to the amount of their respective shares of stock, for all the debts and liabilities of every kind, contracted by the corporation or association after that day. In some of these institutions the State is a stockholder; in most of them, more or less of the stock belongs to infants, or is held by charitable institutions, or by trustees, and others acting in a fiduciary capacity; while large amounts belong to persons residing out of the State, and beyond the jurisdiction of our courts. I suppose this provision of the constitution to contemplate only an ultimate responsibility for deficiencies, after the exhaustion of the assets of the institution; and that it has

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14 Chapter 321, passed April 10, and chapter 432, passed April 11, amended the act of 1848, which provided for the protection of emigrants. Chapter 350, passed April 11, to "amend certain acts concerning passengers coming to the city of New York," contained numerous provisions relative to passengers arriving from foreign ports, and requiring bonds to secure the counties, cities and towns of the state against expenses incurred in consequence of any such person or passengers becoming a public charge. This act was held unconstitutional in Henderson v. Wickham, 92 U. S. 259 (1875).

Chapter 405, passed April 11, also required the master or owner of a vessel arriving in this State to give a bond as security against any expense incurred by municipalities within five years for the support of persons brought in such vessels.

left to the Legislature to declare the manner in which that responsibility shall be enforced, and in which contribution shall be made between the several associates. The near approach of the time when it will become operative, presents the necessity of considering this subject during this session of the Legislature.[15]

The Code of Procedure adopted by the last Legislature, went into operation on the 1st of July last. It was not expected that a system, working so radical a change of long established rules, could be enacted without the necessity of numerous subsequent alterations, which time and experience would inevitably indicate. Many modifications will doubtless be brought to your notice, and I respectfully commend them to your serious consideration, in the hope that the defects inevitable in the commencement of a new system, of such comprehensive extent, however numerous, may not jeopard the many improvements which this Code has introduced.[16]

The present operations of the Judicial System seems inadequate to the speedy administration of justice. In the Court of Appeals the business is accumulating; so also in the several districts of the Supreme Court; although probably the largest accumulation is in the first district where the number of causes upon the calendars of the Supreme, as well as of the local courts in the city of New York, is

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[15] The Legislature responded to this suggestion by enacting chapter 226, on the 5th of April, "to enforce the responsibility of stockholders in certain banking corporations and associations, as prescribed by the Constitution, and to provide for the prompt payment of demands against such corporations and associations."

This act was sustained in United States Trust Co. v. United States F. Ins. Co. (1858), 18 N. Y. 199; *Re* Reciprocity Bank (1859), 29 Barb. 369, affirmed in 1860) 22 N. Y. 9; *Re* Oliver Lee & Co.'s Bank (1860), 21 N. Y. 9, affirmed as Sherman v. Smith (1861), 1 Black, 587.

[16] The Code of Procedure was amended in many particulars by chapter 428, passed April 11.

This act was sustained as to justices' courts in People ex rel. Metropolitan Bd. of Health v. Lane (1869), 55 Barb. 168.

increasing beyond the ability of the courts to dispose of them. I do not wish to infer that the difficulties thus far encountered, are necessarily inherent in the present system, but would rather entertain the hope that they may be found incidental to the change from an established to a new system, and the nearly simultaneous adoption of an entirely new Code of Practice in the courts, and that a remedy may be found within the reach of ordinary legislation, without resort to an amendment of the Constitution.[17]

It has been suggested that relief might be obtained in the First District by an increase of the Judicial Force, under the 4th section of article 6 of the Constitution; but the census of 1845, does not show such proportion between the population of the city of New York and that of the rest of the State, as will maintain the conformity required in case of an increase of the number of justices of the Supreme Court. I do not doubt that an addition to the number of the judges of the local courts in that city, will greatly contribute to the dispatch of business, and will relieve much of the pressure upon the Supreme Court. I would also suggest an amendment of the judiciary act, whereby the business of the courts shall be so distributed as to leave to the circuits the mere trial of issues of fact.[18]

The establishment of tribunals of conciliation, is a provision within the contemplation of the Constitution.* Courts of this nature, although unknown among us, have been long in operation in other countries, and are represented to have been productive of great benefits by the prevention of litigation. The power of such tribunals being

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[17] By chapter 30, passed February 7, the powers of vice-chancellors under the former judicial system were transferred to and vested in justices of the supreme court. Chapter 333, passed April 10, required five terms of the court of appeals each year, and contained other provisions relating to the powers of the court in connection with its terms.

[18] Chapter 124, passed March 24, increased the number of justices of the superior court of New York from three to six, and enlarged its jurisdiction.

* Const. 1846, art. 6, § 23.

simply advisory, except so far as parties may voluntarily agree to abide their decision, can scarcely fail to produce an influence over a reasoning and moral people, in preventing law suits, sufficient to commend their establishment as a part of the system which the Constitution has contemplated, before we indulge in a sweeping condemnation of that system, or commence the work of amending the Constitution. In this view, I bring the subject to your consideration.[19]

I make these suggestions with diffidence, as the subject has engaged able minds, but hitherto without affecting the desired relief. They present themselves to me as feasible modifications of the present system, short of an amendment of the Constitution, which I am unwilling to recommend.

During the past year, the war in which our country had been so unhappily involved with the neighboring Republic of Mexico has been brought to an end. The conduct of that war reflects the highest possible credit upon the officers and men who have achieved a series of victories unparalleled and uninterrupted from the first brilliant success of our arms on the banks of the Rio Grande, down to the crowning act of the war, the capture of the capital of Mexico. The gratitude of the American people has been most cheerfully accorded to the officers and men of those gallant armies, who, in spite of jealousies at home, thwarting and embarrassing their action, have added lustre to the American name. Nor are the services of the navy forgotten by hearts grateful for deeds of valor.

After the commencement of this war, but one feeling animated the whole country. The consideration of its origin was for the time suspended, by the fact of its existence;

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[19] Tribunals of conciliation were provided for by article 6, section 23 of the Constitution of 1846, but no such tribunal was established until 1862, when one was organized in the sixth judicial district. The act establishing it was repealed in 1865.

and among the most ardent of those engaged in the actual conflict of arms; as also among the most active supporters at home, of the vigorous prosecution of the war, were men who thought that war not only unwise and impolitic, but neither just nor necessary. They had had no agency in its commencement, but while hostilities were raging, they cheerfully gave their best energies to their country, reserving their opinion as to the causes which had induced the war, until the restoration of peace should furnish occasion to review the conduct of those who had been charged with the administration of the government.

If the valor and the prowess of our people were established in the field, their philanthropy and justice have been vindicated by their condemnation of the measures and the policy which had broken the silken cords of peace, and involved two Christian nations in the horrors of war.

Among the consequences of the late war with Mexico, has been the acquisition by the government of the United States, of a large extent of new territory. I am sustained by the decision of the highest judicial tribunal in the Union, in the opinion, that while the relations of the inhabitants of the newly acquired territory, with their former government are dissolved, and new relations established between them and the government of the United States, to whom their allegiance is now transferred, yet, that the laws which regulated the intercourse and general conduct of individuals within that territory at the time of the transfer, remain in force, until altered by the newly created power. Among the laws of Mexico in force, within this territory at the time of its acquisition, was one forever abolishing slavery. The change of sovereignty over the territory, has not affected the validity or the force of this law, which, according to the established principles of international law, and the decisions of our own courts, remains in force and is operative at the present day, to the exclusion of slavery from that territory. An effort however is being made to

abrogate or annul that law, if not by its actual repeal through a direct legislative enactment, at least by indirect means, the effect, if not the object of which will be to permit the introduction of slaves within the territory.

However we may deprecate the necessity of discussing a question of a nature to excite sectional prejudices or fears, we may no longer avoid the consideration of one which is now of present, practical and paramount importance.

The State of New York early manifested her attachment to the principles of universal freedom and her repugnance to the institution of human slavery. Holding that the Constitution of the United States at the time of its adoption, found slavery to exist within and by virtue of the laws of the several States, and therefore recognized the fact of its existence as a State institution, without giving to it, in any degree, a national or constitutional character or existence, but left it entirely dependent for its continuance and its regulation, upon the legislation of the several States, our State, half a century since, commenced a course of legislation for the gradual, but certain extinction of slavery within her borders. As a party to the federal compact, she has ever adhered, strictly and literally, to the compromises of the constitution, and has not sought to interfere with the domestic institution, or to disturb the internal policy, of any of the other parties to the compact; but has left each to exercise, in its own way, the same power under which she has proclaimed freedom to all men within her limits. This course she will continue faithfully to pursue, and while she will not intermit the expression of her attachment to the principles of universal freedom, and of her abhorrence of human bondage, she will abstain from all interference with the domestic institutions of other States, beyond that moral influence which must attend the force of her example, and the expression of her deep-seated convictions.

The "compromises of the constitution," as they are

familiarly termed, do not of right extend to territory beyond the limits of the original thirteen States. The privileges which they concede may be granted but cannot be claimed for any newly acquired territory. The question now presented, is not one of interference with an existing institution, for the soil to which it refers is free. By pre-existing laws, no slavery exists there, nor can it exist there, without either the express or the tacit assent of the old States. It is then a question of the introduction of slavery into territory from which it is now excluded, and the consequent political representation of slaves in the Federal Congress, whenever the new territory shall be organized into State Governments, and admitted as such into the confederacy.

If there be any one subject upon which the people of the State of New York approach near to unanimity of sentiment, it is in the fixed determination to resist the extension of slavery over territory now free. With them it involves a great moral principle, and overrides all questions of temporary or of political expediency. None venture to dissent; and in the mere difference of degree in which the sentiment receives utterance, it has proven powerful even to the breaking down of the strong barrier of party organization. This sentiment is not of recent origin with our people. It was this sentiment which, fifty years ago, prompted the abolishment of slavery in this State. It was this nearly unanimous sentiment of the people which was reflected, and received utterance in the voice of our State Legislature, at the period of the agitation of the question, on the admission of Missouri into the Union. Slavery not only existed at that time within the limits of Missouri, but was legalized within the whole of the territory acquired by the United States under the treaty with France. The people of our State were induced to yield their assent to a compromise then made, whereby a State permitting slavery was admitted into the Union, formed out of territory not embraced within the compromises of the Constitution, by

the consideration that slavery and involuntary servitude should be forever excluded from the remaining portion of the territory within which slavery was theretofore authorized. They yielded the political advantage of slave representation, by a portion of the territory, for the moral triumph of establishing freedom throughout the remainder.

They are now asked to become parties to the extension of slavery over territory already free. Their answer may be read in their past history. I believe that it is almost, if not entirely, the unanimous decision of the people of this State, that under no circumstances will their assent be given to any action whereby the institution of slavery shall be introduced into any part of the territory of the United States, from which it is now excluded.[20]

During the past year, the people of the United States have exhibited another instance of the peacefulness and

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[20] On the 4th of January, 1849, the senate adopted the following concurrent resolutions, which were concurred in by the Assembly on the 6th:

"Whereas, the people of the state of New Mexico, have petitioned congress for the establishment of a territorial government which shall protect them against the institution of domestic slavery while they remain a territory of the United States; and have also petitioned congress for protection against the unfounded claims of the state of Texas to a large portion of their territory, lying east of the Rio Grande; and whereas it would be unjust to the people of New Mexico and California, and revolting to the spirit of the age, to permit domestic slavery — an institution from which they are now free — to be introduced among them; and whereas, since the acquisition of New Mexico by the United States, the people thereof have a right to expect the protection of the general government, and should be secured in the full possession and enjoyment of their territory: Therefore,

Resolved, That our Senators in Congress be instructed and our representatives in Congress be requested to use their best efforts to procure the passage of laws for the establishment of governments for the territory acquired by the late treaty of peace with Mexico; and that, by such laws, involuntary servitude, except for crime, be excluded from such territories.

Resolved, That the territory lying between the Neuces and Rio Grande, and that portion of New Mexico lying east of the Rio Grande, are the common property of the United States, and that our Senators in Congress be instructed and our representatives in Congress be requested to use their best efforts to preserve the same as such common property, and protect it from the unfounded claims of the State of Texas, and prohibit the extension over it of the laws of Texas or the institution of domestic slavery.

Resolved, That the existence of prisons for the confinement, and marts for the sale of slaves, at the seat of the national government, is viewed by this legislature with deep regret and mortification; and that such prisons and marts ought forthwith to be abolished.

Resolved, That our Senators in Congress be instructed and our representatives in Congress be requested to use their strenuous efforts to procure

order with which they select the magistrates to whom they confide, for a time, the powers of government. The universal acquiescence in the decision of the majority, indicated immediately and unhesitatingly after the strife of the contest, affords the most encouraging assurance that the perpetuity of our institutions is not jeoparded by differences of opinion with respect to the individuals to be intrusted with power.

The recent elections throughout the Union have had the effect to restore to the People, through their more immediate representatives, much of the power which had been gradually tending toward the Executive. They have declared that the will of the people, on questions affecting their interests and welfare, as expressed through their representatives, ought to be respected and carried out by the Executive. They have proved that the American people value peace, and the advancement of humanity as the true ends and objects for which a republican government was founded. They have given expression to the sentiment, that the constitutional powers of our government are beneficent in their design, and they have administered a rebuke to that creed which holds Government to a state of inaction on the subject of education, industry, internal improvements, and other kindred measures, looking to the happiness of man, the advancement of freedom, and the melioration of the social and political system.

I have thus endeavored to comply with the requirements of the Constitution, which makes it my duty to communi-

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the passage of a law that shall protect slaves from unjust imprisonment, and shall effectually put an end to the slave trade in the District of Columbia."

See 1847, note 13, *ante*, p. 382. The act of Congress, passed September 9, 1851, established a territorial government in New Mexico, and applied to the territory in general terms the constitution and laws of the United States not locally inapplicable. The act authorized the admission of New Mexico as a State, either with or without slavery as its constitution might prescribe. Slavery was abolished in the United States and forever prohibited while New Mexico was still a territory.

cate to the Legislature the condition of the State, and recommend such matters as I may judge expedient. It has been my aim to state facts, and to make suggestions, without more of detail, or of argument, than seemed necessary to a clear statement of the subject. I have entered upon this responsible task with much diffidence; relying upon the indulgence of a generous constituency, ever ready to excuse errors of the understanding, if accompanied by sincerity of purpose, and purity of motive.

I now submit these matters to your enlightened consideration, with the assurance of my most cordial co-operation in all your efforts to advance the varied interests of our great State — confident that your deliberations and actions will be earnestly directed to such ends as will promote the public interests, and advance the cause of religion, learning, morality and happiness. I invoke upon those deliberations and actions, the blessings, and the guidance of that Almighty Being who rules the Universe — in whose hands the wisest of men are but humble agents of His will.

HAMILTON FISH.

Albany, January 2, 1849.

SPECIAL MESSAGES:

January 15. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *Jan.* 15*th*, 1849.

"I transmit herewith the annual report of the Commissary General. I also transmit a copy of a letter addressed to me by the chief of the ordnance department at Washington, received since the date of the Commissary General's report, showing that the quota of arms due to the state is 1759 2-13 muskets, instead of 1670 9-13 muskets, as stated in his letter of the 7th of July last, of which a copy is set forth in the report of the Commissary General.

HAMILTON FISH."

January 20. To the Assembly:

"ALBANY, *January* 18, 1849.

"By the 11th section of chapter 219 of the laws of 1848, p. 333, it was enacted, that if the moneys then provided by law, for the support of the fever and smallpox hospitals at quarantine, should be exhausted during the recess of the Legislature, the commissioners of emigration might use such portions of the commutation money, collected pursuant to the act of May 5, 1847, for the support of said hospitals, as the Governor, Attorney General, and Comptroller might certify to be necessary for that purpose.

It will appear by the papers herewith transmitted, that $20,000 have been transferred pursuant to said law; and on the 23d of December last, an application was made for $10,000 more, but as the last $10,000 previously granted, was supposed at that time to be sufficient to meet the wants of the hospitals until after the meeting of the Legislature, and as no account of the expenditure of that sum was rendered, the Comptroller declined assenting to the transfer, as will appear by the letter of December 23d. The application is again renewed, but as doubts exist whether the power given by that section has not been suspended by the meeting of the Legislature, the undersigned have declined acting, and deem it their duty to refer the whole subject to the Legislature.[21]

All of which is respectfully submitted.

HAMILTON FISH, Governor.
MILLARD FILLMORE, Comptroller."

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[21] By chapter 37, passed February 10, provision for the support of the marine hospital was made by transferring to that object, a portion of the commutation fund collected under L. 1847, chapter 195, but the transfer was not to include money paid under protest, and the amount to be transferred was limited to $20,000, except that the Governor, Attorney General and Comptroller might, if they deemed it necessary authorize by certificate the transfer of an additional $10,000.

January 22. To the Assembly: Transmitting a communication from the Commissary General relative to the location of the gun houses.

January 27. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *Jan.* 27, 1849.

"I transmit herewith a communication which I have received from the Commissioners of Emigration; the necessities of this board, as stated by them, are so urgent, that I feel constrained to ask for their communication your early consideration. [See note 21.]

HAMILTON FISH."

The Commissioners of Emigration called attention to the fact that by reason of the litigation involving the constitutionality of the law taxing alien passengers for the benefit of the marine hospital (1 R. S. 445, title 4), and in which litigation a decision was soon expected from the federal supreme court adverse to the State, the receipt of funds by the hospital had practically ceased, except as to payments under protest. In addition to this situation, the prevalence of cholera had necessitated immediate expenditures which had produced a deficiency of $6,000, and the Governor was requested to present the matter to the Legislature and urge immediate aid to the sanitary establishment of the quarantine to meet the existing emergency. See 1846, Governor's annual message and Note 13. (*Ante,* p. 273.)

February 6. To the Assembly: Transmitting the report of the Adjutant General, who suggested several alterations in the militia law. [See note 3.]

February 9. To the Assembly: Transmitting the annual report of the trustees of the Sailors' Snug Harbor.

February 13. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *February* 13, 1849.

"I communicate herewith a copy of a letter, which I have received from the Right Reverend Bishop Hughes, announcing the transmission of a copy of the Natural History of this State to the Government of the Roman States, under the Pontificate of his Holiness the late Pope Gregory XVI, and expressing the sentiments of good will entertained towards this country by the present Pope.

This letter is accompanied by one to Bishop Hughes, from the Cardinal Secretary of State, a copy of which is also herewith transmitted. It will be seen from these letters, that His Holiness has not been content with the mere expression of his good feelings, but has accompanied that expression with a most valuable and interesting donation, which he has appointed the Right Reverend Bishop to present, in his name, to the Government of this State.

This donation was placed in the hands of the Trustees of the State Library some weeks since by Mons. Vattemare. It consists of a very large collection of elegantly executed copper plate engravings, copied by able artists from the paintings of the most celebrated masters, and of specimens of all the medals struck during the present Pontificate. Of these medals, three are of gold, one of silver, and two of bronze — all of the most exquisite workmanship.

A description of the medals, and a catalogue of the engravings, are communicated herewith.

The very valuable additions which are thus made to the State Library, together with the regular increase by means of the ordinary appropriations, have indicated the necessity of more extensive accommodations than are furnished by the rooms now appropriated for the use of the Library. Many interesting books and works of art, which belong to the Library, are closed to the public, for want of the proper facilities for their exhibition; and the Trustees of the

Library are unable to suggest any mode whereby the engravings now received from the Pope, can be suitably exhibited within the present rooms.

In addition to the scant accommodation of the present rooms, the Library is in constant danger from fire. The introduction of a new mode of heating into the building not constructed with a view thereto, is constantly jeoparding the valuable treasures which the State has gathered into its library. It is stated, that the building in which the Library is placed has been three times on fire during the present season.

As the necessity of enlarged accommodations for the Library has attracted the attention of the Legislature, and been made the subject of an able and interesting report, I need only add my strong hope, that the Legislature will give an early and a favorable consideration to a proposition which is demanded as well for the safety, as for the accommodation of the Library.

HAMILTON FISH."

Letter from Bishop Hughes:

To his Excellency HAMILTON FISH,

Governor of the State of New York.

SIR.—I had the honor of forwarding, by request of the proper officer on the part of this State, to the Government of the Roman States, under the late Pope Gregory XVI, a copy of the Natural History of the State of New York. Gregory XVI died soon after the receipt of that work, and owing to the events which took place in consequence of his demise, the proper acknowledgment was postponed until the beginning of last year. By letter from the Cardinal Secretary of State, dated 17th March, 1848, I was advised that his present Holiness was about to forward to me, for presentation to the State of New York, through the agency of Mr. Vattemare, certain tokens of his good feelings towards this country, and in courteous reciprocity for the excellent works above alluded to. Mr. Vattemare, unaware,

as I presume, of these instructions, has already presented these gifts of his Holiness. Yet I am persuaded that, even under the temporary reverses to which Pius IX has been since exposed, he would deeply regret that these objects should have been presented to the Government of the State unaccompanied by the expression of those sentiments of good will, emanating from his generous heart, which would give to any memorial thereof its principal value.

Under these circumstances, I have the honor to enclose to your Excellency the letter by which the Cardinal Secretary of State has made known the sentiments with which the Holy Father desired the presents to be accompanied.

I have the honor to be,

Sir, with sentiments of profound respect,

Your Excellency's obedient servant,

JOHN HUGHES, Bishop of N. York.

New York, January 29, 1849.

Letter from the Cardinal Secretary of State of Rome.

RIGHT REVEREND SIR.— Among the courteous demonstrations made to his Holiness, from the very beginning of his glorious Pontificate, those forwarded in several instances on the part of the illustrious Governments of the United States of America, with valuable collections of works on different subjects, are deserving of particular mention. These expressions of good will towards him have most gratefully impressed the mind of his Holiness, who well understands from them the favorable dispositions of the authorities of that country towards the Catholics who live in it. But the satisfaction of the Supreme Pontiff is attested better than any words of mine could do, by the tangible proofs which I have the honor of transmitting to you herewith, at the same time appointing you, Rt. Reverend Sir, to present them, in the name of his Holiness, to the honorable Government of your State. They are a collection of copper plate engravings, copied by able artists from

the paintings of the most celebrated masters, and published by the Chalcography of the Apostolic Chamber, and, moreover, specimens of all the medals struck during the present Pontificate. I take occasion also to request, that you will render this friendly interchange of his Holiness even more acceptable to the above praised Government, by the earnest expression of the heartfelt interest he takes in the prosperity of the United States, which increases day by day, through the wisdom and activity of those to whom its direction is confided.

I will be happy, Rt. Reverend Sir, to learn the fulfilment of the pleasing duty with which I have the honor to commission you, in the name of the Holy Father; and in the meantime I profit of this opportunity to tender you the expression of my distinguished regard.

Your servant,

G. CARDINAL ANTONETTI.

Right Reverend JOHN HUGHES,
Bishop of New York.
Rome, March 18, 1848.

See Assembly Document No. 117, for a description of the medals and works of art presented by the Pope.

February 20. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *February* 17, 1849.

"I communicate herewith a copy of a letter from his Excellency the Governor of Rhode Island, accompanying a resolution of the General Assembly of that State.

This resolution directs application to be made to the Governor of this State, for a manuscript volume now in the office of the Secretary of State, containing the Record of the court of commissioners for settling and determining

the boundaries of the Colony of Rhode Island. Having no power to grant the request, I present the application to the Legislature.[22] HAMILTON FISH."

It appears from the resolution that the record was desired as evidence of the boundary between Rhode Island and Massachusetts determined by the commissioners on the 7th of April, 1741. Governor Elisha Harris in his letter to Governor Fish said that "three copies of the record were ordered to be made; one for the King, one for Massachusetts, and one for Rhode Island," but the Rhode Island copy had not been received; that the controversy respecting the boundary was likely to be renewed by Massachusetts; and that the Rhode Island authorities desired the record of the New York office, expressing the belief that it could be of no use to New York, but might be of great consequence to Rhode Island. [See 1850, special message of March 1, *post*, p. 507.]

February 20. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *February* 20, 1849.

"Application has been made by a deputation of Seneca Indians, for the recognition of a new form of government which they claim to have established in a general convention of the Seneca nation of Indians, abolishing the ancient form of government by chiefs, which has heretofore existed in the several nations of the Iroquois confederacy.

This convention was held on the Cattaraugus Reservation, and on the 4th of December last, adopted a declara-

[22] The Legislature responded to Rhode Island's request by adopting a concurrent resolution "that a copy be made immediately of a volume now in the custody of the Secretary of State, containing the record of the Court of Commissioners for settling and determining the boundaries of the Colony of Massachusetts Bay, held at the town of Providence, in the said Colony, Tuesday, the 7th day of April, 1741, and that the same, after having been duly compared and certified by the Secretary of State, shall be handsomely bound and presented by the Governor in the name of the State of New York, to the State of Rhode Island."

tion and a constitutional charter and passed resolutions directing that a copy of the declaration and charter then adopted, should be transmitted to the Governor of this State with the request that the same be put on file in the proper offices.

I have placed the manuscript copy which I received from the clerk of the nation under this new government, on file with the Commissioners of the Land Office, in whom has been vested by the act of 1841, the charge of most of the relations of this State with the Indian tribes.

Another deputation representing the chiefs, has earnestly remonstrated against any change being recognized in the form of government of their ancient forest republic, or in the relations between the government of this State and that of the Seneca nations of Indians.

Each of these parties has been represented at the seat of the federal government; and I am informed that the bureau on Indian affairs, has given notice to the sub-agent of the United States for the New York Indians, that the new form of government will be recognized by the government of the United States, and that so far as may be necessary, its relations with those Indians will be made to conform thereto.

No power exists in the Executive to recognize or to disclaim the new form of government. The power of making treaties with the Indians which was formerly lodged in the Executive, was transferred by the act of 1841, to the Commissioners of the Land Office. The objects for which the Commissioners are authorized to treat with Indians, are supposed to be limited, so as not to enable them to act upon the question which the friends of the new government desire to present.

It has therefore been deemed advisable to present the whole subject to the consideration of the Legislature. I accordingly communicate herewith a copy of the resolutions, and of the declaration and constitution adopted by the new form of government, together with the papers

which their representatives have submitted to me, including copies of letters from the commissioner of Indian affairs at Washington, declaring the intention of the government there to recognize the newly established government of the Senecas.

I also communicate a letter and remonstrance addressed to me by the representative and delegate of the chiefs, earnestly and eloquently protesting against any change in the relations between the government of this State and that of the Seneca nations; and also copies of a protest and remonstrance addressed to the President of the United States, which they desire may also be considered by the authorities of this State in determining on the question which is now submitted.

These papers present the question as submitted by the respective parties. The subject is full of interest, as bearing upon the peace, the happiness and the future civilization of the remains of what was once a great and powerful nation. The importance of an early decision of this subject as involving not only a question of philanthropy and benevolence, but also one of high State policy, induces me to commend it to your attention.[23]

HAMILTON FISH."

[For the papers referred to in the Governor's message, see Assembly Document No. 108.]

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[23] On the 27th of March, the Assembly adopted the following concurrent resolutions, which were concurred in by the Senate on the 6th of April:

"Whereas, It appears from the communication of his Excellency, the Governor, made to the Legislature on the 20th day of March, instant, that a portion of the native Indians residing in this State, on the Cattaraugus and Allegany Reservations, met in convention, and on the fourth day of December last, formed a Constitution for their government, founded on popular elections, and thereby abrogated their former government by Chiefs; and, it further appearing that such new Constitutional Government has been recognized by the Government of the United States, as the Government, *de facto*, of said Indians, therefore,

Resolved, That the recognition by the Government of the United States of the new Constitutional Government lately formed by the Indians residing on the Cattaraugus and Allegany Reservations, establishes the new Government as that which the State of New York must receive and acknowledge in its dealings with said Indians, and that the officers of this State ought, and are hereby instructed, to respect such new Government accordingly.

March 10. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *March* 10, 1849.

"In the spring of 1847, the appropriation for the publication of the Natural History of the State being exhausted, and the arrangements which had been made under former laws with the geologists engaged in the work having expired, the Legislature passed an act (Laws of 1847, chap. 212,) authorizing the Governor to continue in employment the geologists then engaged upon that portion of the work relating to Agriculture and to Palaeontology, for a period not exceeding two years from the time when their salaries had then ceased, under previous arrangements, and appropriating twenty-five thousand dollars for the purposes of the act. It was not supposed that this appropriation would be sufficient to complete the work. I learn from the chairman of the committee of the Senate, to whom the subject was then committed, and by whom the act above referred to was reported, that the estimates for the completion of the work, at that time, amounted to about $80,000; to which, in making the verbal report which accompanied the bill, the committee added twenty-five per cent. for contingencies, thus representing the probable expense as not exceeding $100,000. I learn from the same source, that the time limited by the act, for the continued employment of the geologists, was considered by the committee, and so represented to the Legislature, as ample for the completion of the work then contemplated.

Resolved, That in future the annuity which, under the treaty with the Senecas, is made payable to the Chiefs of that nation, hereafter be paid by the Treasurer, on the warrant of the Comptroller, to the order of such officer or agent as shall, under said new Constitution, be appointed to receive the same and give proper discharges therefor."

By chapter 378, passed April 11, all the powers and duties which by the laws of the State had been granted to or charged upon the chiefs of the Seneca nation of Indians, residing on the Cattaraugus and Allegany reservations in the State, were granted to and charged upon the President and councillors of the Seneca nation of Indians. See 1850 special message of January 8, for a protest against this act.

At the time of the passage of this act, Professor Emmons had been engaged on that portion of the work relating to Agriculture, and Professor Hall, on Palaeontology. The salary of Professor Emmons, under the previous engagement, had ceased on the 1st of October, 1846, and that of Professor Hall had ceased on 1st of April, 1847. Dr. Emmons' salary, under the engagement made in pursuance of the act of 1847, ceased on 1st October last, and Mr. Hall's will cease on 1st April next.

The appropriation of $25,000, made by the act of 1847, has been exhausted for several months, and large amounts are now claimed to be due for work said to be completed, and still larger sums will be claimed for the work said to be in progress. An appropriation is necessary to meet the obligations now resting upon the State, and, as much of the money claimed has long since been payable, the importance as well as the justice of your early action on this subject, become apparent.

The amount of the appropriation to be made, will undoubtedly be the subject of careful examination by the Legislature. The amount claimed as now due for salaries, &c., and for engravings and coloring, complete, but not paid for, exceeds $16,500; while the engravings said to be in progress in the hands of the engravers, and the coloring of plates said to be commenced, will exceed $17,750. This does not include any charge for printing, binding, &c., nor for any engravings not yet in the hands of the engravers.

In addition to the above, I am informed that there are claims being held in reserve for damages against the State, for alleged violation of former contracts. Of the nature or extent of the claims, I have no means of judging.

The completion of the Natural History of the State has been delayed very far beyond the reasonable expectation of the Legislature, or of those who urged it upon the Legislature. And the increased cost of the work beyond the original estimate, is even greater, in proportion, than the difference between the time that has been actually con-

sumed, and what was supposed to be sufficient for its completion.

The original estimate of the expense of the work was one hundred and four thousand dollars. About four hundred and thirteen thousand dollars have already been expended. Even this large expenditure, if properly applied, would have been justified as a contribution to Science and to the development of the resources of the State.

In the completion of so large and costly an undertaking as this has been, engaging, as it has done, many persons and various branches of the arts and sciences, and of mechanical pursuits, it is perhaps scarcely to be expected that the State should not have been called on to disburse a larger amount than was actually necessary, or that much labor should not have been bestowed which might as well have been omitted.

When the last appropriation of $25,000 was made, (in 1847) the whole work, with the exception of the departments of Agriculture and Palaeontology, was complete.

It was understood that these two departments would require about two years longer to bring them to a close.

I now learn from Mr. Hall, that the completion of his work will require three years longer, although he thinks five years might be advantageously expended upon it.

Dr. Emmons informs me, that he hopes to complete his work in the course of the next winter.

An immense increase of expense will result from the very large addition which has been made to the number of plates for illustrating the work, beyond what was represented, in 1847, to the committee, as requisite. That committee was informed, that the department of Agriculture would require fifty plates, averaging twenty figures to each plate, mostly for the representation of insects; and that the department of Palaeontology would require two hundred and fifty plates, averaging twenty figures on each, for the representation of the fossils.

In the Agricultural department, there have already been

placed in the hands of the engravers, one hundred and forty-three plates, containing about 742 figures; and I am informed by Dr. Emmons, that "to complete the Entomological part, thirty-seven plates, averaging twenty figures per plate, will be required, or, in other words desirable." This will make one hundred and eighty plates, instead of fifty, and 1482 figures, instead of 1000.

Of the 143 plates given out, some are complete, and others are in progress. Only thirteen of these plates represent insects; ninety-one are given to fruits; eighteen to vegetables, grains, &c., seven to wood structure; and fourteen to tables of temperature, &c.

In the department of Palaeontology, there have been placed in the hands of the engravers, seventy-four plates, containing about 1530 figures. Mr. Hall estimates, that about one hundred and seventy-eight plates, containing 3,385 figures, remain to be prepared; in addition to which, he proposes a map and sections, to be colored. This map, with the sections, he estimates as equal to twenty-five plates, making the illustrations in this department equal to two hundred and seventy-seven plates, instead of two hundred and fifty.

In the Agricultural department, all the impressions, as soon as printed, are delivered to be colored. The charge for this coloring is $150 per plate.

I understand, that none of the illustrations for the Palaeontology are to be colored, with the exception of the maps and sections above referred to. I do not find any contract to have been made for this coloring;* and as the number of plates has increased so much beyond the estimates submitted to the committee of 1847, I have given directions not to have any more coloring done, beyond what is now in hand, until the pleasure of the Legislature shall be made known.

(* Since this was written, it has been represented to me, that my predecessor had "verbally designated to Mr. Ebenezer Emmons, Jun., the coloring of the plates, fruits, and insects, or such of them as might be necessary, in the judgment of Messrs. Hall and Emmons.")

The difference to the State between representing 1,000 figures on 50 plates, and the same number of figures on 180 plates, (all to be colored,) at the prices charged, is about $30,000, of which $19,500 would be for coloring the additional 130 plates.

Written contracts were made by my predecessor with R. H. Pease, and with Gavitt and Duthie, for the engraving and the printing of the plates.

As the appropriation was exhausted before the commencement of my official service, I have not been called upon to recommend the payment of any bills for work done; and I desire to abstain from the expression of any opinion, in anticipation, on claims which may be advanced. The only action which I have felt authorized to take, has been that above mentioned, of directing the discontinuance of the coloring of the illustrations.

I have received communications from the geologist, and from several of the persons employed on various parts of the work, which I do not think it necessary to transmit, but which will be laid before the Legislature, or any committee thereof, if desired.

This work has made too much progress to be abruptly discontinued, and the State appears to be now liable, under the existing contracts, for the greater portion of the amount necessary for its completion. I therefore recommend an appropriation of an amount sufficient to discharge the existing liabilities of the State, and to meet those claims which will accrue under existing engagements entered into on behalf of the State. Also, that the Legislature should prescribe the manner in which the work shall be continued and brought to completion.[24]

HAMILTON FISH."

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[24] By chapter 266, passed April 7, the Natural History act of 1846, was extended two years from April 7, 1849, and provision was made for disposing of surplus copies of the volumes of history. The Appropriation act, chapter 400, passed April 11, contained several items relating to the compensation of specialists, and other expenses incurred in carrying on the work.

March 17. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *March* 17, 1849.

"I transmit herewith a communication from the Secretary of the Navy requesting the assent of the Legislature of this State to the purchase by the United States of a lot of land above and under water, adjoining the United States Navy Yard in the city of Brooklyn; and also requesting a cession to the United States of jurisdiction over all the ground and water contained in the place, not heretofore granted by the State of New York.

The letter of the Secretary shows the necessity of early action on this subject.[25]

HAMILTON FISH."

March 30. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *March* 30, 1849.

"Mons. Vattemare, as agent for International Exchange of Literary and Scientific works, has presented to me a report accompanied by an interesting letter from his agent in Paris, on the progress of the work during the eventful year, 1848.

I transmit herewith these communications, that of Mons. Vattemare's agent in Paris being both in the original and in English.

The interest which the people of our State have manifested in the success of this liberal and enlightened system, will be fully sustained by the evidence which the papers, herewith communicated, present of the result which it has accomplished.

In the midst of the fierce commotions and conflicts which deluged Paris with blood, and worked a revolution in the government of France, the peaceful and benign operations

[25] Land for the Brooklyn Navy Yard was ceded to the United States in 1853, by chapter 355.

of this system of exchange were not interrupted. The influence of this silent but efficient agency rose above the excitement and violence which overthrew a kingdom, and quietly pursued its liberalizing and beneficent designs.

To Mons. Vattemare belongs the high praise of having conceived and brought to successful operation a system which engages the nations of the world in acts of comity, of sympathy and good will; looking to the advancement of science and literature as a common object, and which aims to unite the various and remote parts of the earth into one republic of letters.

The Legislature have heretofore shown its appreciation of the value of Mons. Vattemare's scheme. I commend to your favorable and attentive consideration the accompanying documents, with the hope that you may find in them a sufficient incentive to the further continuance of the aid which the State has heretofore extended to this object.[26]

HAMILTON FISH."

See Assembly Document No. 201, for the report and letter referred to in this message.

March 31. To the Assembly: Transmitting copies of a report and resolutions of the Legislature of South Carolina upon the principles of the Wilmot proviso, and also a copy of the report and resolutions of the Legislature of Virginia, relative to the legislation of Congress upon the subject of fugitive slaves, and suggesting additional legislation thereon. The records do not contain these documents.

April 5. To the Assembly: Transmitting resolutions adopted by the Legislature of Missouri on the subject of

[26] The Legislature adopted a concurrent resolution placing at the disposal of the Regents fifteen copies of the laws, journals and documents of the State for international exchanges, and by chapter 401, passed April 11, appropriations were made for the expenses incurred in making exchanges, and for the purchase of additional copies of the journals of the Provincial Congress, and of the transactions of the American Ethnological Society for the purpose of exchange.

slavery, among other things denying the power of Congress to legislate on the subject, so as to affect the institution of slavery in the states, in the District of Columbia, or in the territories; asserting that "any organization of the territorial governments, excluding the citizens of any part of the Union from removing to such territories with their property, would be an exercise of power by Congress, inconsistent with the spirit upon which our federal compact was based, insulting to the sovereignty and dignity of the States thus affected, calculated to alienate one portion of the Union from another, and tending ultimately to disunion;" reaffirming the principles of the Missouri compromise relative to the extension of slavery; declaring that the right to prohibit slavery in the territory, belonged exclusively to the people thereof, and could only be exercised by them in forming their constitution for a state government, or in their sovereign capacity as an independent State; and that "in the event of the passage of any act of Congress, conflicting with the principles herein expressed, Missouri will be found in hearty co-operation with the slave-holding states, in such measures as may be necessary for our mutual protection against the encroachments of northern fanaticism."

April 11. The Legislature adjourned without day.

1850. JANUARY 1. LEGISLATURE, SEVENTY-THIRD SESSION.

HAMILTON FISH, Governor.

ANNUAL MESSAGE, JANUARY 2.

FELLOW CITIZENS OF THE SENATE AND ASSEMBLY.—In a review of the condition of the State, during the year which has closed, while there are many causes of abundant thankfulness, it is not permitted to me to indulge in congratula-

tions upon the continuance to us as a people, of the blessings of general public health. The sovereign Ruler of the universe, in His Wisdom, has seen fit during the past season, to visit many portions of the State with a malignant disease, which has swept away thousands of our fellow citizens. We have enjoyed too many of the blessings which a bountiful Providence has vouchsafed to us, not to submit with resignation to such dispensations as His wise purposes may bring upon us, and we may now, with reason, be thankful that the scourge has ceased to exist within our State. The progress and the ravages of this mysterious disease, suggest the necessity of the exercise of your duties, as the guardians of the public health, to interpose, so far as human agency may avail, whatever legislative enactments may be efficient to guard against the re-appearance of this pestilence, to investigate its history, and its nature, and in the event of its return, to mitigate its severity.

Upon the outbreak of the Asiatic Cholera within our State, in pursuance of the authority conferred by an act of the Legislature, passed at the last session, I issued a proclamation on the fifth day of June last, reviving and continuing in force for one year from that date, the "Act for the preservation of the public health," passed June 22, 1832. Under this act, boards of health were organized in various parts, if not throughout the State, and the sanative and precautionary powers conferred by the act have been found efficacious in removing many of those causes which have been supposed to attract and to fix this disease, whose nature and whose course have been so subtile, so mysterious, and so erratic as to baffle the investigations of science.

It is now nearly eighteen years since it made its first appearance on this continent. Within that period it has three times overspread the whole breadth of the land, and while it has claimed its thousands upon thousands of victims, much remains to be learned of its nature, its origin,

its course, and its proper treatment. The devotion of medical men to the cause of humanity, and their frequent gratuitous attention, and constant self-sacrificing privations for the alleviation of human suffering, preclude the idea that the continued absence of accurate and of acknowledged information, is the result of any want of skill or of attention on their part. It proceeds rather from the want of an accurate combination of reliable facts, within the experience of the individual members of the medical profession.

No subject more universally affects all classes, and all members of the community, than that of the public health. I therefore earnestly request your attention to the existing laws on this subject, and suggest the propriety of their careful review and amendment, especially with a view to secure the benefit of the combined experience of scientific and learned men, throughout the State, with respect to the origin, the causes, the progress and the treatment of all malignant or infectious diseases.

It will also become important to consider the powers granted to the municipal and local authorities for the prevention and removal of nuisances, and for the prohibition of offensive and deleterious occupations, within thickly inhabited districts. These powers require enlargement, and should be conferred permanently. It is by no means improbable that the epidemic which has lately visited us may return. In this event, these powers may be essential to mitigate the severity of the visitation. I have been informed that the act of the last session authorizing the revival of the act of 1832, has been judicially declared to be unconstitutional. This decision may render necessary a confirmation of the various important sanative regulations enforced in different parts of the State, as well as a new grant of power, under which they may be exercised, without the objection which is understood to have been made to

the form in which the act of the last winter proposed to confer them.[1]

It may also be well to consider whether the time has not arrived, when the State is called upon to contribute its aid more efficiently than it has hitherto done, to advance the cause of Medical Education. Every inhabitant of the State, at some time or other, feels the need of the physician, and is interested that he should be learned and skilful.[2]

The reports of the Comptroller, and of the Commissioners of the Canal Fund, will be shortly laid before you, and will present in detail a statement of the financial condition of the State, and will exhibit most gratifying evidences of the public confidence in the credit of the State, and in the management of its financial concerns. I refer you to these reports for details and for particular statements.

At the close of the fiscal year, ending on the 30th of September last, the General Fund debt amounted to	$6,389,693.32
The canal debt	16,505,345.67
Total "direct" debt	$22,895,038.99

Toward the payment of which debt there was on hand,—

A surplus of the General Fund Debt Sinking Fund of	$13,515.16
A surplus of the Canal Fund Debt Sinking Fund of	200,877.01
	$214,392.17

[1] A general act for the preservation of the public health, chapter 324, was passed April 10. It provided for the annual appointment of boards of health in cities and villages, and established such boards in towns to be composed of certain officers. The act defined the powers and prescribed the duties of boards of health. The act did not apply to Brooklyn, nor to New York, which city was made the subject of a special act, chapter 275, passed April 10.

[2] The New York Medical College, located in the city of New York, was incorporated by chapter 206, passed April 8.

Included in the amount of canal debt above stated is the sum of $90,822, which was payable prior to the close of the fiscal year, but had not then been presented for redemption. The interest on this had ceased from the time when it became payable; the funds for its redemption being on hand awaiting the call of the holders of the stock. Since the close of the fiscal year, $77,917 of this amount have been redeemed.

The revenue of the General Fund, exclusive of the annual appropriation of $200,000, from the surplus canal revenues, made by the Constitution, and including a temporary loan to the treasury of $15,000, was.	$792,451.69
The canal revenues were.....	3,442,906.62
Aggregate revenue.....	$4,235,358.31

The payments on account of the General Fund during the year, amounted to $842,228.49, leaving a surplus of the revenue on hand, on 30th September, of $113,279.22.

The payments out of the canal revenues were:

1. Expenses of collection, superintendence and ordinary repairs.....	$685,903.91
2. Appropriations made by article 7 of the Constitution, toward the Sinking Funds, and to defray the necessary expenses of the government.....	1,850,000.00
Total payment.....	$2,535,803.91

This amount of payments deducted from the canal revenues of the year, leaves the sum of $907,102.71, applicable to the completion of the Erie canal enlargement, the Genesee Valley and Black River canals.

Notwithstanding the prevalence, during nearly the whole of the past season, of an epidemic disease, which greatly interrupted all commercial business, and diminished the amount of transportation on the canals, the receipts from tolls, &c., during the past year show an increase of nearly $225,000 over the receipts from the same source during the preceding year; while the fact that the canals were in excellent condition, and that the expenses of collection, superintendence and ordinary repairs are nearly $170,000 less than during the preceding year, is strong evidence of the economy, skill, and good management which have been infused into this department of the public service, under the direction of the Commissioners in charge during the year.

The General Fund debt exceeds the amount stated last year, by the sum of $400,000. $385,000 of this amount constitute the sum directed by chapter 225 of the laws of the last session, to be paid to the use of the Canal Fund, to repay the principal and interest of the amount stated to have been paid from the Canal Fund to the General Fund after the 1st of June, 1846, beyond the amount limited by the Constitution.[a] The object of the act authorizing this re-payment, was to effect an adjustment between the two funds, in order to conform their respective actual amounts to the amendments which the Constitution made to the previously existing laws, and which amendments related back to the 1st of June, 1846, although not adopted until some months subsequently. The remaining $15,000 of the above sum, were borrowed in pursuance of chapter 188 of the laws of 1849, for the building of the State Arsenal, and is to be reimbursed from the avails of the sale of the land in the city of New York heretofore occupied for the arsenal.

The annual interest on the General Fund debt, now amounts to $354,829.86, while the annual amount set apart by the Constitution from the surplus revenue of the canals, as a Sinking Fund to be applied to the payment of the interest and principal of this debt, is but $350,000; showing a

[a] Const. 1846, art. 7, § 3.

deficiency to meet the interest in each year from this appropriation of $4,829.86, which must be paid out of the revenues of the fund; throwing another burthen upon the fund, and presenting a strong admonition for the necessity of economy and discretion in the amounts and objects of legislative appropriations. With prudence in this respect, the revenues of the fund it is thought will be fully adequate to meet the current and legitimate drafts upon them.

Of the canal debt, $3,140,819.34 will become due prior to January, 1856. The avails of the canal debt Sinking Fund will be sufficient to meet this amount, as the surplus for the years 1851 and 1852 can be arranged to meet the loans falling due in 1851, and no further loan on the credit of the fund will be required to meet the stocks now outstanding until the 1st of January, 1856, when $4,000,000 will become due.

On the 1st of July last, $2,149,000 of the canal debt fell due; all of which, with the exception of $87,000 bore interest at seven per cent. The appropriations made by the Constitution from the surplus revenues of the canals to the Sinking Fund, not being sufficient to retire the canal debt as fast as it falls due, the 5th section of the 7th article of the Constitution, authorizes loans upon the credit of the Sinking Fund for this purpose. In pursuance of this authority, and under chapter 216 of the laws of 1848, $1,739,-024.76 were borrowed in June last, redeemable in July, 1865. A loan has also been effected during the year, under the 10th section, of article 7, of the Constitution, and in pursuance of chapter 228 of the laws of 1849, to the amount of $50,000 for extraordinary canal repairs. And a further loan has also been negotiated, on the credit of the Sinking Fund, under chapter 232, of the laws of 1849, for the purpose of discharging the claims against the State, for damages and awards due prior to 1st June, 1846; which, although not then liquidated, constituted a part of the canal debt at that date, for the payment of which, the 1st section of article 7 of the Constitution, creates the Sinking Fund.

These several loans bear interest at six per cent., and it may be remarked with just pride and satisfaction, in contemplating the high credit of the State, that these loans, running for fifteen and sixteen years, respectively, have yielded an average premium of 11 70-100 per cent.

A law passed last winter authorized the borrowing of a sum of money to repay to the city of Albany, certain expenses incurred for excavating and cleaning out the basin, opposite to that city, at the termination of the Erie and Champlain canals. The necessity for borrowing this money, will be obviated, if the Legislature shall think proper to direct the application to the repayment contemplated by the act referred to, of the premiums received on the loan of $1,739,024.76 effected last summer, which amount to $207,954.56.[3]

The enlargement of the Erie canal, and the completion of Black River and Genesee Valley canals, are progressing as rapidly as consists with the limited appropriations for those objects under the constitution. In the spring of 1850, 122 6-10 miles of the enlarged Erie canal, and 415 enlarged structures will be in use; being an addition of 13 miles, and of 47 structures during the year.

Of the Black River canal, 34 miles are finished, and ready for navigation and will be open for use with the other canals next spring.

Of the Genesee Valley canal, 36 miles beyond its present termination are in such state of forwardness, that they can be brought into use in the course of the next season.[4]

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[3] It appears from the general appropriation act, chapter 365, passed April 10, that the money provided by the act of 1849 to reimburse the city of Albany, for excavating and cleaning out the Albany Basin was actually borrowed and state stock issued therefor. The premium received on the loan mentioned by the Governor, was, by chapter 370, passed April 10, transferred to the account of the canal debt sinking fund.

[4] Chapter 192, passed April 8, appropriated $170,000 for the Genesee Valley canal; chapter 220, passed April 8, appropriated $120,000 for the Black River canal; chapter 354, passed April 10, appropriated $654,399.71

The appropriation made by the last Legislature for improving the upper waters of the Hudson River, has been judiciously applied, and will have the effect of opening new tributaries of revenue to the Champlain canal, as well as new channels of approach to a large and hitherto secluded region, rich in the products of the mines and the forest, and which, until recently, had received but little if any aid from the State toward the development of its resources.

The condition, on the 30th September last, of the three funds whose revenues are applied to purposes of education, was as follows:

	Capital.	Revenue.	Payments.
Com. School Fund..	$2,243,563.36	$284,903.76	$244,407.14
Literature Fund....	265,966.78	42,089.96	43,436.64
U. S. Deposit Fund.	4,014,520.71	256,934.93	264,602.58

The adoption by the people at the last annual election, of the act to establish free schools throughout the State, will effect a most important change in the system of common school education. Under this law, the common schools are to be free to all persons over five and under twenty-one years of age.[5] On the first day of July last, there were 11,191 organized school districts in the State; being an increase of 570 over the number reported last year; and the number of children taught in the common schools during the year, was 778,309, being an increase of 2,586 over the

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for the Erie canal enlargement, and $168,000 for the Main and Hamburgh canal in Buffalo.

[5] The free school act of 1849, chapter 140, was held unconstitutional in Barto v. Himrod (1853), 8 N. Y. 483, for the reason that by its terms it depended for its validity on the affirmative action of the people. The court said the legislature could not delegate to the people themselves the power to make laws; the constitution had vested legislative power in the Senate and Assembly.[ε] By chapter 378, passed April 10, 1850, the question of the repeal of the free school act of 1849, was to be submitted to the people at the general election in 1850. The people by a small majority voted not to repeal the act. See annual message of 1851.

[ε] Const. 1846, art. 3, § 1.

preceding year. There are 1,893 unincorporated and private schools in the State, comprising 72,785 pupils. The aggregate amount of public money received by the several common school districts, from all sources, during the year, was $846,710.45. Of this sum, $626,456.69 have been apportioned for the payment of teachers' wages. In addition to which, $489,696.63 were raised in the several districts on rate bills for the same object, making an aggregate of $1,143,401.16 expended for teachers' wages during the year ending 1st January, 1849.

The whole number of volumes in the district libraries, is 1,409,154; 70,306 volumes having been purchased during the year, and $93,104.82 having been expended for district libraries and school apparatus.

Of the schools before mentioned, 35 are for colored children, in which upwards of 4,000 children have been taught, at an aggregate expense of $5,016.57; of which $2,149.60 were contributed on rate bills by those sending the children to school. Considering the usually very limited means of our colored population, this large proportionate contribution voluntarily paid by them, shows a most commendable desire, on their part, to secure to their children the benefits of education.

The report of the Superintendent of Common Schools, will probably suggest some amendments to be made to the existing laws. I trust that they will be such as will commend themselves to your favorable consideration.[6]

The Normal School was removed, on the 31st of July last, to the large and commodious edifice which the State has recently erected for its use, at a cost of $25,000. The benefits resulting from this institution, are fully justifying the warmest anticipations of its friends, and are making themselves manifest in the improvement already effected

[6] By chapter 261, passed April 10, the schools of incorporated orphan asylums, except in New York, were entitled to share in the distribution of the common school fund in the same manner as ordinary school districts.

among the teachers of Common Schools. The whole number of pupils admitted to the institution since its organization, has been 1,129; of whom 428 have graduated, nearly all of whom are now engaged in the duties of common school teachers. The present number of pupils is 217.

A proposition will, as I am informed, be made to you to authorize the instruction at this school of a limited number of Indians, in the hope, by this means, of introducing a higher order of education and civilization among the small remnants of the Aboriginal race which are left within our borders. I solicit for this proposition your attentive and favorable consideration, as a measure not only prompted by the dictates of humanity and benevolence, but demanded alike by considerations of high policy, and upon principles of justice toward a class of our population, who, from having once been the lords of our soil, and the founders of a beautifully simple and essentially republican government, have gradually wasted before the advances of the white race, and have dwindled in energy and in numbers, and have sunk into a state of tutelage which demands the fostering care of the Government.[7]

In pursuance of a concurrent resolution of the Legislature, passed on the 6th of April last, I appointed a board of commissioners to mature a plan for the establishment of an Agricultural College and Experimental Farm, and to prepare a statement of the probable expense of such an institution, and a detailed account of the course of studies and plan of operations recommended.

The board entered zealously into the views of the Legislature, and has gratuitously devoted much time and labor to advance the important object contemplated in the passage of the resolution. I submit herewith their report.[8] It

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[7] Chapter 89, passed March 23, authorized the annual expenditure of $1,000 for the education of ten Indian youth in the State Normal School.

[8] For the report of the agricultural college commission, see Assembly document No. 30.

is eloquent, and powerfully argues in behalf of the advancement of agricultural science. It is not improbable that differences of opinion will exist with regard to the details, and to the extent and variety of the branches of knowledge which it is proposed to embrace within the course of instruction. But I most earnestly hope that no such differences, and that no other cause, may prevent the establishment and the endowment, upon a wise and comprehensive system, of an institution so beneficent in its design, and so promising of enduring and beneficial results, as a school for instruction in practical and scientific agriculture, and in the mechanic arts. There is a growing interest on the part of the people in the advancement of agricultural science. The Fair of the State Society, held at Syracuse, in September last, was attended by a larger number of persons than had ever before been assembled on a similar occasion in this State. And the exhibition of the various implements and products afforded a gratifying evidence of the success of this society, in the advancement of the great objects which it aims to accomplish.

The nature of the circulation issued by banks, as the representative of the precious metals, often forces it upon those who are incapable of exercising a discrimination as to its value, or whose necessities compel them to forego that exercise. Our laws have, therefore, provided safeguards for its integrity and its redemption; and the paper currency of our state may be regarded as healthy and sound. Some further legislation is deemed advisable for the prevention of abuse in the organization under the General Law, of institutions, designed rather to profit from the mere issue of notes, than to furnish banking facilities to the business community. The time will soon arrive when it will become necessary to consider whether the securities required by existing laws, to be hypothecated for the redemption of the circulating bank notes, will be sufficient in amount to furnish a basis for the circulation that will be

required to be issued upon that pledge, when the charters of the several incorporated banks shall expire, and they shall be brought under the provisions of the General Law. The operation of the Sinking Funds is gradually but certainly withdrawing our State stocks, and will eventually render necessary the substitution of some other securities. The report of the Comptroller will present some important suggestions with reference to these matters, to which I solicit your careful attention.[9]

The large influx of the precious metals, which is pouring in from the Pacific regions, is adding rapidly to the amount of coin in circulation, and furnishes another and a pressing reason for a demand from this State upon the General Government, for the establishment of a Branch Mint, or for the removal of the principal mint to our great sea port, which is the point of arrival of nearly all the gold introduced from California. It is earnestly hoped that Congress will no longer delay an act so imperatively demanded by the interests of the country.[10]

In my annual message to the Legislature last year, I presented to their consideration several subjects, in my opinion, worthy of their attention, accompanied with such remarks as were deemed appropriate. I will not detain you by a repetition of what was then said; nor will I enlarge upon the reasons which induced me to present them to the notice of your predecessors. I shall merely allude to the subjects, and take the liberty to refer you to the views with respect to them, which I submitted to the Legislature, and to renew the recommendations then made. These subjects were—

The restoration of the office of County Superintendent of Common Schools.

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9 By chapter 332, passed April 10, the comptroller was authorized to invest bank funds in bank fund stock becoming due not later than 1856.

10 The Legislature adopted a concurrent resolution recommending the establishment of a branch mint in the city of New York.

A revision and alteration of the laws under which taxes and assessments for local improvements are imposed and their payment enforced.

An amendment to the laws so as to ensure a more general and equal taxation of personal property.

A reduction of the compensation authorized by law to be received by the Health officer of the city of New York.[11]

The establishment of Tribunals of conciliation,[b] in accordance with the provisions of the Constitution.[12]

A modification of the criminal code, so as to abridge, in proper cases, the terms of imprisonment; to reduce the minimum of sentence to the State Prison to one year; and to increase the limit prescribed by law for the division between grand and petit larceny.

The benefits of the provisions of the act in relation to pardons, passed at the last session of the Legislature, have been manifest. In several cases, the publication has induced information with respect to the prisoner, which would probably never have been brought to the knowledge of the Executive, had the pendency of the application not been made known to the public; and there is reason to believe, that many applications have been withheld under the certainty that the advertisement would attract attention and ensure opposition.

The number of persons pardoned during the year, from the State prisons, has been 27; and from the local prisons, 7. I communicate herewith the statement required by the Constitution, of the pardons granted during the year.

In the month of August last, I received a certificate from the Commissioners for the erection of the Western House of Refuge for Juvenile delinquents, that the house was in

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11 The New York city health law, chapter 275, fixed the compensation of the resident physician and commissioners, who were to receive a salary instead of fee.

b Const. 1846, art. 6, § 23.

12 As to tribunals of conciliation, see 1849, note 19, *ante*, p. 444.

readiness for the reception of persons committed thereto; and in pursuance of the 15th section of the act authorizing the establishment, I made an order designating the counties which should thereafter send juvenile delinquents to this house. It has now thirty-one inmates. The building, as now completed, affords accommodation for about one hundred delinquents, and for the officers and persons employed in the establishment. A plan of building was adopted, such as to be perfect as now finished, and yet admitting the erection of three more wings of equal capacity with that now completed, without marring the proportion of the whole. Each of these wings will accommodate about a hundred inmates. It will be seen from the rapidity with which the house is filling up, that its capacity will soon be exhausted, and another wing will be required, the cost of which, it is represented, will be from ten to twelve thousand dollars.

During the past summer, the male department of the House of Refuge in the city of New York had become so crowded, that its managers issued a notice that no more boys could be received at present.

The whole number of children received in this house from its establishment to December 12, 1849, was 4,690. At this latter date, there were 334 children in the house. Without more extensive accommodations, this number is larger than is consistent with the proper classification of the children, for the separation of those less hardened in crime from the influence of the more depraved. Such classification is necessary to the object of the institution, which is the reformation rather than the punishment of those youthful delinquents, who may have been drawn thoughtlessly into the commission of crime, from which parental influence or good advice kindly administered, might have restrained them.

Should the legislature determine to enlarge the Western House of Refuge, it will be advisable to authorize the

transfer to that establishment, from the one in New York, of those inmates now in the latter, who may have been sent thither from the counties which are now designated to send delinquents to the former.[13]

The number of prisoners in confinement in the several prisons of the State, on the 1st of December, 1849, was 1,483, being an increase of 174 over the number on the corresponding day of the previous year.

The earnings and expenditures of the several prisons during the fiscal year ending 30th September last, together with the daily average number of prisoners in each, were as follows:

	Earnings.	Expenditures.	Daily average of prisoners.
Auburn Prison	$67,613 79	$56,777 99	535
Sing Sing Prison.....	66,379 84	68,793 64	641½ males 81 females
Clinton Prison	10,976 22	50,126 47	143½

A large proportion of the expenditure of the Clinton County Prison, is stated to have been for extraordinary objects, not constituting a part of the regular expenses of the prison. The officers of the prison return these at $22,479.52. The deduction still leaves an excess of expenditure over the earnings of this prison, of $16,670.73, and it may be questioned whether some of the expenditures which are classed as extraordinary, will not be found to be frequently recurring.

The annual report of the inspectors will present the condition of the prisons more in detail, and I respectfully refer you to it.[14]

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[13] By chapter 24, passed February 26, all juvenile delinquents in the fourth, fifth, sixth, seventh and eighth judicial districts were required to be committed to the Western House of Refuge at Rochester. Delinquents in the first, second and third districts were to be committed to the House of Refuge in New York, and convicts under seventeen years of age, confined in the Auburn or Clinton Prison, were to be transferred to the Western House of Refuge.

[14] Chapter 250, passed April 10, made appropriations for workshops and other improvements at Sing Sing and to provide for a water supply.

The financial condition of the State Lunatic Asylum, is represented to be prosperous. The receipts from the board of patients have been adequate to defray all the ordinary expenses for the year. From the opening of this institution, 2,376 patients have been admitted; 1,017 of whom have left the asylum cured.

This institution was under the superintendence of Dr. Amariah Brigham from its first opening, in January, 1843, until his labors were arrested by death, in September last. In the death of this devoted and philanthropic man of science, the cause of humanity has sustained a serious loss. The large number of recoveries effected under his management, is an eloquent testimonial to his skilful and devoted attention to the trust confided to his charge.

The several institutions encouraged and sustained in a large degree by the State, for the education of the Blind and of the Deaf and Dumb, and the New York Hospital, are prospering, and are efficiently carrying out the benevolent objects contemplated by their establishment.

The present condition of these several charities will be more fully shown by their respective reports, which will soon be presented to you, and will furnish a gratifying exhibition of the fidelity with which the trust committed to their several boards of directors has been discharged, and an inducement to continue the aid which the State has heretofore extended to these charitable objects. The amount of payment to these institutions last year exceeded $111,000; but as that sum included payments for buildings and permanent objects, it is hoped that the claims for the future will be much reduced.

The liberality of the State in its endowments of various charities which have been cherished by its munificence for the support and maintenance and for the education or relief of those who are not blessed with God's choicest gifts of the reasoning and perceptive faculties, has been rewarded with a measure of success in the several objects to

which it has been directed, which encourages the inquiry, whether there be not yet a class of unfortunates who labor under a dispensation that imposes upon the State the duty of undertaking their physical, intellectual and moral improvement, and the advancement of their comfort, and of their means of usefulness and of enjoyment.

The census of 1845 shows a return of 1620 idiots within the State, and there are reasons for the belief that this number is far short of the reality.

The success which has attended the efforts made of late years to resuscitate the mind of the idiot, and to elevate him in the scale of human beings, has demonstrated, at least with sufficient certainty to call for the active aid of the State, that these unfortunate creatures, the most afflicted as a class of all whom the heavy dispensation of a wise Providence has visited, are susceptible within definite limits, of mental and physical development and improvement.

The State has already recognized the obligations resting upon it, to provide for the education of its children, and has made liberal provision for the education of those deprived of the organs of sight, and of hearing and speech, as well as for the improvement and reclamation of the lunatic. The efforts of the Legislature should not be intermitted, until they have secured to all classes and conditions such an education as they may be capable of receiving, and may qualify them for the duties pertaining to their respective pursuits and conditions in life.

The number of idiots exceeds that of either the Blind or the Deaf and Dumb. While the State has made liberal provision for the care and education of the latter, it has done nothing for the improvement of the idiot. The parents and the friends of the many hundred idiots in the State, seek in vain a refuge, or a school, where their afflicted children or friends may be protected or made useful. The reason is doubtless to be found in the strong impression which has

prevailed, that nothing could be done for the improvement of the idiot. This impression must, however, now be confined to those who are not willing to receive the evidence of what has been successfully accomplished. He has been taught to articulate, and to talk distinctly, and to bring his passions and appetites into subjection; he has been instructed and made to read, to write, and to sing, and to exercise mechanical labor and skill in various trades. These results induce me to recommend the establishment, by the Legislature, of an Asylum and School for Idiots, on such scale and terms of endowment as your wisdom shall deem best.[15]

The operation of the laws of the last session on the subject of alien passengers, has been highly satisfactory. It is believed that the objections to the former passenger laws, on which they were decided by the Supreme Court of the United States to be repugnant to the federal constitution, have now been obviated; whilst the original object of that legislation, the relief and support of diseased or destitute emigrants, have been completely attained. The experience of the year has pointed out some imperfections in the details of the act, which do not affect its general principle or leading provisions, but which demand legislative correction. These will probably be pointed out by the Commissioners in their report. The change of the system at the quarantine, separating the charge of the Marine Hospital from the other duties of Health Officer, has resulted in a much improved efficiency, economy, and order in the Quarantine establishment. The magnitude of the business devolved upon the Commissioners under these laws, may be conceived from the statement, that 213,552 alien passengers arrived at the port of New York during eleven months, from 1st January to 1st December, 1849; of whom 2,894 were forwarded by the Commissioners to

[15] An asylum for idiots was established in 1851, by chapter 502, passed April 10

distant places, where they could meet employment; 7,000 were received into the hospitals at Ward's and Bedlow's Islands, and 3,162 into the Marine Hospital. The average weekly number of patients in the former hospitals exceeded 1,392, and in the latter, 455. Temporary relief was afforded to 16,200 emigrants; and the sum of $43,023.77 was paid to the several counties of the State, to reimburse them for expenses incurred in the relief afforded by them to emigrant poor. This amount does not include the expenses of such counties for any part of December, nor the whole amount for November.

The laws for the protection of emigrants from the imposition to which they are specially subject, immediately on their arrival, have been attended with excellent results, in defending or assisting the helpless and the stranger, who have sought a refuge on our shores. Still, these laws are not perfect — they need further examination and improvement; for which object I earnestly commend them to your consideration.[16]

It will become part of your duty to consider the necessity which seems to exist of providing more ample, if not more adequate, accommodations for the State Library. When the care of the Library was committed to the Regents of the University in May, 1844, the number of volumes was computed to be about 10,000. In the Catalogue now printing, the Law Books alone exceed 9,700, and the aggregate number of volumes is about 25,000. It is evident that the rooms now used are not capable of meeting this rapid increase which is still progressing. Every part of them is now filled, and it has become difficult to find, or take down many, while hundreds of volumes are locked up in various repositories, for want of sufficient accommodation in the Library rooms. In addition to this, the State has a very valuable and interesting collection of maps, and will shortly

[16] Chapter 339, passed April 10, amended in several particulars the alien passenger acts of 1847 and 1849.

receive many more, illustrative of the progress and history of our country. These should be easy of examination and reference. We have, too, the valuable and extensive collection of engravings presented by the Pope, which should be exhibited on the walls of the Library.

Uniting all these considerations, and adding to them the comparatively unsafe condition of the present rooms, in reference to the danger from fire, to which I referred more particularly in a communication to the Legislature last winter, I feel it incumbent upon me to recommend an appropriation for additional, if not other apartments for the use of the Library.[17]

In connection with this subject, it may be remarked that the building now partly occupied by the State Cabinet of Natural History, is totally unfitted for such a purpose. The rooms are arched, and a quantity of space is lost which is much needed for the exhibition of the valuable and extensive collection of specimens which the State has brought together to illustrate its Natural History. And the trustees are completely stopped in their plans for increase, by the absolute want of room in which to place the very interesting Indian and Natural History collections which are crowding upon them. The State Agricultural Society, from the extension of its collection, needs all the lower rooms of this building.

Should you deem it advisable to authorize the construction of any additional building, it appears very desirable that such erection should be made for the accommodation

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[17] In 1851, by chapter 226, passed June 19, provision was made for the erection of a fire proof library building, fifty by one hundred feet in dimensions. The library was at that time in the capitol. The new building was to be located on the state land in the rear of the capitol unless its erection would interfere with the light in the Assembly chamber, in which case additional land was to be purchased for the library building. The new building, including land purchased if any, was not to cost more than $50,000. Several years afterwards the library was established in the new capitol. By chapter 678, passed in 1906, provision was made for the erection of a new library building to cost not more than $4,000,000.

of both the Library and Cabinet of Natural History, as will meet their wants for some years to come, and by giving to the agricultural society the use of the rooms now occupied by the cabinet, increase the accommodation and the means of usefulness of this valuable association.

I desire to bring to your notice the fact, that we have no complete collection of the colonial laws of New York in print. The originals of these laws are in the Secretary of State's office. I cannot doubt that a competent commission could be instituted to superintend such a publication, without any pecuniary compensation. The only expense, exclusive of that of printing, would be a moderate salary for a secretary to do the necessary clerical work, and to arrange the laws in chronological order.[18]

A law passed last winter, appointed three commissioners of the Code to perform the duties specified in the 17th section of article 1 of the Constitution, and authorized the Governor to fill any vacancy which might occur during the recess of the Legislature. Two of these Commissioners have resigned. The resignation of Mr. Spencer was on the 25th of June last; that of Mr. Worden took effect on the 1st day of November. Under the power conferred by the law, I have endeavored to fill the vacancies in a manner calculated to ensure the object contemplated by the act and by the Constitution, and have offered the appointments to a number of the most eminent jurists of the state. The vacancies, however, still exist. As they occurred during the recess of the Legislature, the power to fill them under the act is probably with the Governor. But as I have not succeeded in the exercise of the power, before the Legislature has convened, and as, in my opinion, an alteration of the law organizing the Commission is essential to its prac-

[18] In 1891, by chapter 125, provision was made for the publication of the colonial laws under the direction of the statutory revision commission. These laws were published in five volumes, and were distributed as provided by chapter 400, passed May 10, 1897.

tical success, I respectfully refer the matter to your consideration, and shall abstain from any efforts to fill the Commission during your sitting, or until there shall be an expression of your opinion on the subject.

The principal difficulty in filling the existing vacancies, arises from the inadequacy of the compensation allowed, and the limitation of time compared with the magnitude of the labor to be accomplished. The restriction of time imposed by the existing law, is fatal to the accomplishment of the work. The undertaking "to reduce into a written and systematic code the whole body of the law of this State," is too vast to be accomplished under the pendency of such a pressure, or to be completed by the labors of three men within two years. I therefore recommend an increase of the compensation of the Commissioners, and an extension of the time limited for their continuance in office.[19]

It is a subject of not unfrequent complaint, that the due administration of public justice is often impeded in consequence of the present mode of empanelling jurors in criminal cases, and of the exercise of the right of challenge by the traverser, and by the manner of conducting the trial and defence.

Trials attended with any notoriety, are apt to involve great consumption of time in the scrutiny of the jury. Weeks have been consumed in this effort in a single cause; and I am informed by one of the Justices of the Supreme Court, that in a trial before him, upwards of four thousand persons were examined in a fruitless endeavor to empannel a jury. I understand that the Commissioners to revise the rules and practice of the courts, will submit to your consideration a proposition intended to obviate the difficulty which has been experienced in this particular. Not having

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[19] Chapter 281, passed April 10, 1850, repealed the fourth, fifth, sixth and seventh sections of the act of 1849, chapter 312, which created a commission on procedure, and also a commission on the code. The sections repealed related to the latter commission.

had the opportunity to examine the alterations which they propose, I cannot express an opinion upon their suggestion; but the subject is one of importance, and will, I hope, engage your early attention.

The experience of those familiar with the proceedings in the criminal courts, has suggested the propriety of allowing to the prosecution a limited number of peremptory challenges. I am convinced that the ends of justice would thereby be advanced.

The allowance of bills of exceptions, is believed to be a principal cause of the delays and protracted trials in criminal cases, and of the occasional failure of justice. Prior to the adoption of the Revised Statutes, criminal trials were reviewed by the courts reserving the point in dispute for the consideration of the Supreme Court on a case made; when, if the point did not affect the merits, the court was at liberty to disregard it. Upon bills of exception, however, the whole case is not sent up, but only enough for a proper understanding of the single point raised; and if the ruling on that point be erroneous, however immaterial it may be to the main question of guilt or innocence a new trial must be granted. The effect is, that the judge on the trial, unwilling to embarrass the case by exceptions, or to give the accused the chance to avoid the consequences of a verdict of guilty by exceptions on points really immaterial, is tempted to relax the rules of evidence, and to let in almost any testimony which may be offered.

A serious defect exists either in our statutes relating to summary convictions upon the charge of vagrancy, or in the practice under those statutes. These proceedings involve a wide departure from the principle which pervades our whole jurisprudence, and which secures to every person accused of an offense a trial by jury; they are, therefore, justly regarded with jealousy, and should be restrained by stringent rules for the protection of personal liberty.

While public policy undoubtedly indicates the necessity of placing under restraint and discipline those who lead an idle life, without employment, and without the visible means of support, it also indicates, with equal certainty, the distinction which should be observed between them and the willfully corrupt. A distinction is recognized by our statutes between different individuals, whom it classes under the general name of "vagrants;" some are recognized as proper objects for the poor house, while others are to be committed to the common jail. But in practise, it is believed that nearly all the commitments for vagrancy are to the county prisons; thus merging the distinction (so essential to justice and to the moral elevation and reformation of the vagrant, as well as to the effective punishment of the criminal,) between poverty and crime; and commingling, in a common disgrace and punishment, those whose chief fault is destitution or perhaps disease, with those who have been convicted of a willful transgression of the law.

I have been led to these remarks by an investigation made during the past year, and embodied in the presentment of a grand jury, in which it is represented that of seven hundred and forty-six persons at that time confined in the Penitentiary of the city of New York, upon the charge of vagrancy, whose commitments had been examined, two hundred and twenty were confined "for matters which do not constitute vagrancy under any description of it," as defined by our statutes, but "because the offense charged is poverty, sickness, or destitution," while of the whole number of seven hundred and forty-six, only three were lawfully imprisoned. Such a fact calls imperatively for an examination of the statutes under which such transactions have occurred.

While it is admittedly a primary duty of the Legislature to enact laws for the punishment of vice, it is no less its duty to remove the causes which frequently lead to the

commission of crime. The impressions made upon the youthful mind by the gentle force of parental authority and example, and by the associations of the family circle, are among the most active and enduring of the influences which control the conduct of after life. Much of the vice that we are called upon to deplore, may be traced to the early removal of its subject from the reach of that authority and example, and from the innocent but wholesome associations of a home, however humble. The cause of morality, no less than the dictates of humanity, demand the preservation of the family circle, and the maintenance of the family home, as efficient preventives of vice, and sure and permanent contributors to individual virtue and happiness, and to public prosperity and order.

In this view it becomes us to consider whether the causes by which this wholesome influence is often broken up, may not be removed or lessened.

Doubtless the most frequent cause of dismemberment of families is found in the pecuniary inability of the parent to maintain his household establishment.

The humane and wise policy of the State, many years since, provided an exemption from execution for debt, of sundry articles in favor of persons being householders. The list of articles thus exempted has at various times been enlarged — at all times in favor of persons being householders, and so as to embrace articles essential to the maintenance of the household establishment, and to prevent the dismemberment of families. And yet the wise policy of the law often fails of its object, and the household is dispersed for want of an abode, wherein the pleasures of an undivided family may alone be left to sweeten the hours of adversity, and to cheer and stimulate its members in their efforts to repair their misfortunes while they retain their virtue.

It is this consideration which induces me to suggest a further extension of the present exemption, so as to exempt

from sale upon execution, the premises occupied as a homestead, to a limited value.

The most exact observance of the rights of property, and of the inviolability of contracts, should characterize all legislation in a civilized government. An essential feature, therefore, of any law for this purpose, should be its careful and scrupulous avoidance of the violation of any existing rights. The exemption should not extend to contracts made before the enactment of the law, but should be prospective in its operation, and the homestead should not be exempt from a debt incurred for its purchase.

I submit these as among the guards which should attend the exemption; relying, however, upon the wisdom of the Legislature, should it think proper to consider the subject, to suggest and mature such provisions as will carefully protect the rights of the creditor, and guard against the commission of fraud, while they may effect much in the cause of humanity toward the prevention of crime, the relief of poverty, and the support and education of the young and the helpless.[20]

The policy of our government and of our institutions is wisely adverse to large standing armies. Our reliance is therefore upon the militia organized and armed in accordance with the requirements of the Federal Constitution, and the laws of Congress in pursuance thereof.[c] The condition of this force within our State is highly satisfactory. Prior to the enactment of the law of 1847, for the reorganization of the militia, the system had become obnoxious to large numbers in the community, and the militia service was regarded with disfavor, except, in the various uniformed corps, which did not exist to any great extent out

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[20] A homestead exemption was provided for by chapter 260, passed April 10. It authorized the exemption of a lot and the buildings thereon of the value of $1000, if occupied by the debtor and his family. This exemption was afterwards included in the Code of Civil Procedure, sections 1397 to 1404.

[c] U. S. Const. art. 1, § 8, clause 16.

of the cities and the large towns; and the trainings of the militia came to be regarded as an uselessly onerous burthen to the people.

The object of the militia laws of 1847 and '48, was to provide a thorough enrolment of all persons in the State liable to military duty — to offer larger inducements and thereby to increase the number of uniformed companies — to advance their efficiency, and at the same time to lessen the expense both in time and money to which the members were subject, and to relieve the mass of the citizens from the burthens of the previous law.

The organization under these new laws progresses but slowly. Like every new system, this has its defects, which were not foreseen at the time of its enactment, but which it is hoped can be remedied by the Legislature, as they are developed in practice. Some of these defects will be pointed out, and the remedy will be suggested, in the report of the Adjutant General, to which I solicit your early attention.

It is estimated that there are near 300,000 persons in the State liable to military duty, and yet the number enrolled the present year is returned at only 87,595. These returns are very imperfect. They embrace but about one-third of the State. It is particularly important that you direct your attention to such an amendment of the laws as will ensure full and accurate returns, and an early organization of the entire body of the militia.

Notwithstanding the delays and difficulties which have embarrassed a new system, 233 uniform companies have been organized under the late acts, in addition to others previously in existence — thus presenting a strong, efficient and reliable force, constantly increasing, ready and willing to sustain the laws of the State, and to fulfil the duties imposed upon them by the Constitution of the United States.

The report of the Commissary General will present to you the condition of the State property entrusted to the care of this officer. The laws relating to this department

require a thorough revision. I am induced to believe that some alterations will be suggested in the report of the Commissary General, to which I beg leave to call your attention.[21]

Few subjects affect more intimately the interests and convenience of the people, than the means of safe, speedy, and widely extended social and commercial communication. There are now in operation within the State, twenty-five railroad companies, and upwards of eleven hundred miles of road, upon which daily vast numbers of human beings are carried. In judging of the future, it would be difficult to form an adequate conception of the immense stream of travel and commerce which will flow over these great highways, at no distant day, when they shall have penetrated the yet sequestered regions of the State, and when the trade of the great West, still in its infancy, shall have reached its full growth and magnitude. It is the duty of a wise government to encourage enterprises which tend, like our railways, to approximate distant parts of the State, to destroy sectional interests, to explore and bring into social and commercial relations districts hitherto almost inaccessible, and to increase largely the sale of agriculutral products, by bringing the best market near to the door of the producer. So, on the other hand, the great and rapid extension of the railway system calls for such judicious legislative regulations as will more adequately secure the protection of life, and the largest degree of safety, coupled with comfort, and the requisite rate of speed.

The frequency of accidents and collisions naturally leads to inquiry into the causes, and the proper remedy to be applied to the prevention of so great an evil. It cannot be doubted that a large proportion of these accidents arises

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21 Chapter 269, passed April 10, authorized the commissary general to sell the arsenal property in the counties of Clinton, Essex, Franklin, St. Lawrence, Jefferson and Onondaga, and also all the arms and other property belonging to the state, which had become unserviceable or useless for military purposes. Provision was made for the safekeeping of property not sold.

from the use of a single track, by cars running in opposite directions. The subject is eminently worthy of legislative attention, with a view to afford every just facility for the construction of railroads, and at the same time to enforce prudent regulations for the security of human life.

While the power of the Legislature to authorize, by a general law, the taking of private property for public use, in other cases than where the constitution sanctions a delegation of local legislative authority to the boards of supervisors, may well be questioned, there exist strong reasons why the exercise of so important a branch of sovereign prerogative should not be surrendered, in this way, to private associations without great caution.[d] Provision has, however, already been made by law, for the exercise of the right to decide the public utility of highways, turnpikes and plank roads, by the local authorities of the counties within or through which such improvements are designed, and under proper restrictions it might be sound policy to extend the benefit of similar provisions to the construction of railroads. Beside the plain and strict compliance with the provisions of the constitution which such a system would present, in connection with the general law authorizing companies to incorporate themselves, it would take from these corporations every ingredient of exclusive privilege, and would relieve the Legislature from the weight and burthen of a large amount of duty entailed upon it under the present system, and would prevent, in a great degree, the interference of speculating enterprises, or of measures prompted by the anticipation of gain, with the consideration and the decision of other questions of public importance.[22]

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[d] Const. 1846, art. 1, § 6; art. 3, § 17.

[22] A general railroad act, chapter 140, was passed April 2.

This act was sustained as to various provisions in Buffalo & N. Y. C. R. Co. v. Brainard (1853), 9 N. Y. 100. Saunders v. New York C. & H. R. R. Co. (1894), 144 N. Y. 75. The amendatory act of 1854, chapter 282, was also sustained in *Re* Prospect Park & C. I. R. Co. (1881), 85 N. Y. 489.

It is with no slight degree of pain that I feel it a duty again to refer to a subject which is attracting the earnest attention, and the most anxious solicitude of the people, and which continues to excite the strongest sectional prejudices, and forms perhaps the only speck in our political horizon whence any danger can be reasonably apprehended to affect the internal harmony of our confederacy.

The acquisition by the United States of a large extent of territory contiguous to that portion of the States wherein the institution of domestic slavery continues to be tolerated, and the necessity of providing some form of government for these new accessions to the jurisdiction of the general government, have furnished the occasion, which seems to be inevitable, of determining the question whether the institution of slavery shall be permitted to extend itself within the bounds of these newly acquired possessions, from which it has been excluded by the municipal laws of the power which at the time had the sovereign jurisdiction over the territory, and from which the United States acquired its title and its right.

The discussion and the decision of this exciting question, should be approached in the spirit of kindness and of mutual and charitable toleration for differences of opinion, necessarily resulting from differences of education, of habits, and of the association by which men are surrounded, and with the determination to resist and to check all tendencies, from whatever quarter they may proceed, toward fanatical agitation, sectional excitement, or partisan advancement. A firm and decided expression of our own convictions of right, and even of our unalterable determination of action, if temperately made in this spirit, is not only justifiable but proper, and can give no just cause of offense to those with whom we differ on this one point, while united by the strongest bonds of brotherhood in the recollection of a common and a glorious union in the past, in the realization of a common interest in the present, and

in the hope of a brilliant and an enduring future of peace, of union, and of prosperity to our common country and to her cherished institutions.

It is no new declaration in behalf of the state of New York, that she regards slavery as a moral, a social and a political evil.

At the time of the separation of the States from the government of Great Britain, the people of New York, in common with most of the other states of the Union, found the institution of slavery among the evils which had been fastened upon them by the avarice or the misgovernment, or neglect of the parent country. Appreciating it then, as she now does, as an evil and a wrong, our state, early, and while the slave population was large, and bore the proportion of more than one to fifteen of the free population, commenced a course of legislation for the extinction of slavery within her borders. Regarding it as a domestic relation founded upon and limited to the range of the territorial laws of our state, dependent for its continuance and its regulation upon the legislation of the several states, New York exercised her exclusive power over the institution within her own borders, but has carefully avoided any interference with the right of other states to regulate their internal policy in their own way; not because her repugnance to human bondage, or her attachment to the principles of universal freedom, were confined to the limits of her own jurisdiction; but because of her attachment to the Union of the States, and because of her solemn regard for the compact into which she had entered with those States.

But while she has thus scrupulously abstained from all interference with the domestic institutions and the internal legislation of her sister states, her voice has been frequently raised in behalf of human freedom, and in opposition to the extension of slavery beyond the limits of those states within which it has heretofore been sanctioned. Her expressions on this point have been frequent and emphatic, and their repetition at this time will not be unexpected.

At the time of the adoption of the Federal Constitution, slavery existed in twelve of the thirteen states of the Union. From six of the twelve it has since been excluded by the legislation of the states themselves.

Seventeen new States have been added to the confederacy, nine of which recognize and sanction slavery, while only eight have come into the Union with laws prohibiting involuntary servitude. The admission of five of these eight free states was guaranteed by a compact anterior to the adoption of the Federal Constitution, made between the States of the Confederacy and the people residing in the territory northwest of the River Ohio, leaving only three new free States which have been admitted into the Union whose admission was not contemplated and assured at the adoption of the Constitution.

Of the nine new slaveholding States, five have been formed out of territory which has been acquired by the United States since the adoption of the constitution, and which, consequently, could not of right claim the benefit of the compromises of that instrument, which, nevertheless, have been gratuitously extended to them. And one of these five States has come into the Union with a clause in the resolutions whereby it was annexed, under which, at some future day, four additional slaveholding States may ask admittance into the Union.*

However deeply New York may have regretted the extension of an institution which she solemnly believes to involve a great moral wrong, and to be attended with social and political ills, in her loyalty and devotion to the Union, she has refused to consider the political advantages which have been so repeatedly conceded, and has assented to an

* The joint resolution adopted by Congress in 1845, providing for the admission of Texas into the Union, authorized the erection of four additional States from the territory embraced in the new State. Any such State formed from territory south of the Missouri Compromise line, thirty-six degrees, thirty minutes north latitude, might be admitted with or without slavery as determined by the people thereof, but a State formed out of territory north of said line was to be admitted without slavery.

extension of the compromises of the Constitution, in order to bring into the Union new elements of strength and of greatness, to open new fields for enterprise, and to develop the national power and the capacity of man for self-government.

In this assent to an extension of the compromises of the Constitution, while again and again yielding important political advantages, New York has made no concession of principle. The institution of slavery existed within the territory out of which these new States were formed, before it came under the jurisdiction of the United States, and by virtue of previously existing ordinances of the power from which our Government derived its title.

Holding that the Government of the United States has no right to interfere either towards the establishment or the abolition of this domestic relation within the limits of the several States, New York reaffirmed her constitutional belief when she renewed the evidences of her attachment to the Union, and of her disposition to yield advantages, by assenting to the admission of these new States.

She did not stop to consider the magnitude nor the frequency of the concessions which she was making, and the merely political advantages which she was voluntarily relinquishing; — nor does she now consider them. But she does stop before consenting to be a party to what she deems a wrong, and such she considers would be the attempt to establish slavery, under the sanction, or with the assent of the General Government, within any portion of the territories of the United States whence it is now legally excluded.

The General Government has made four separate acquisitions of territory. By each of the three former, slave territory was acquired, and from these acquisitions, five new slaveholding States have already been admitted into the Union, with an implied promise of four more, at some future day. The last accession of territory is the only one whereby we have acquired jurisdiction over soil whence

Slavery was, by existing laws, entirely prohibited. By the treaty with Mexico, the territories of New Mexico and California came to us free; and the laws of Mexico abolishing slavery, which were in force at the time of the cession, continue to be operative, and are not affected by the transfer of sovereignty over the territory.

The people of California have recently taken initial steps toward admission into the Union as a sovereign State. By the constitution which they have adopted, they have embodied, in their organic law, the prohibition of slavery or involuntary servitude. And a petition was presented to Congress, during the past winter, in behalf of a portion of the people of New Mexico, asking for the establishment of a territorial government, which should protect them against the institution of domestic slavery. The voice of the people of California has thus been expressed in favor of freedom; and there is little room for doubt that New Mexico sympathizes in sentiment with California. Congress cannot, without a transgression of its constitutional powers, establish slavery within this territory; nor can it, without the violation of the principles of justice, and an utter disregard of the wishes of the people, and of the protection which it is bound to extend over the territory to which it has acquired the title, refuse admission to the new State, or countenance or sanction, in any way, the introduction of slavery within the territory. And without the sanction and the assent of Congress, these newly acquired territories are secured to freedom, and must remain as they now are, exempt from the institution of slavery.

The emphatic voice of the Legislature of the State of New York, expressed in the resolutions passed at their last two sessions, and the nearly unanimous sentiment of the people of our State, have declared that under no circumstances will their assent be given to the extension of slavery into these territories, from which it is now excluded.

New York loves the Union of the States. She will not contemplate the possibility of its dissolution; and sees no reason to calculate the enormity of such a calamity.

She also loves the cause of Human Freedom; and sees no reason to abstain from an avowal of her attachment. While, therefore, she holds fast to the one, she will not forsake the other.[23]

The foreclosure of a mortgage, given to the Commissioners for loaning certain moneys of the United States, has vested in the State the title to a small piece of land, and to the stone building, near Newburgh, in the county of Orange, known as "Washington's Headquarters." I respectfully submit that there are associations connected with this venerable edifice which rise above the consideration of dollars and cents, and which should distinguish it from other acquisitions and property of the State, and should prevent its being disposed of unless for objects in some degree congenial with its past history. It is perhaps the last relic within the bounds of the State, and under the control of its Legislature, connected with the history of the illustrious man who left us this patriotic admonition:—

"It is of infinite moment that you should properly estimate the immense value of your national union to your collective and individual happiness; that you should cherish a cordial, habitual, and immovable attachment to it; accustoming yourselves to think and to speak of it as a palladium of your political safety and prosperity; watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion that it can in any event be abandoned; and indignantly frowning upon the first dawning of every attempt to alienate any portion of our country from the rest, or to enfeeble the sacred ties which now link together the various parts.

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23 The Legislature adopted concurrent resolutions, urging the abolition of slavery in the District of Columbia, protesting against any extension of slavery in the territory lately acquired from Mexico, favoring the admission of California with its constitution which prohibited slavery; and declaring that New York would oppose any action which might have the effect to dissolve the Union. See also 1847, note 13, and 1849, note 20, *ante*, pp. 382, 448.

In contemplating the causes which may disturb our Union, it occurs as matter of serious concern that any ground should have been furnished for characterizing parties by geographical discriminations—'northern and southern, Atlantic and Western:' whence designing men may endeavor to excite a belief that there is a real difference of local interests and views. One of the expedients of party to acquire influence within particular districts is, to misrepresent the opinions and aims of other districts. You cannot shield yourselves too much against the jealousies and heart burnings which spring from these misrepresentations. They tend to render alien to each other those who ought to be bound together by fraternal affection."[24]

If our deliberations and actions are governed by the spirit breathed forth in this admonition, we may confidently hope for the continuance to us, as a Nation, of those blessings which the wise and bountiful Ruler of the Universe has hitherto abundantly granted.

HAMILTON FISH.

Executive Chamber,
Albany, January 1, 1850.

SPECIAL MESSAGES.

January 8. To the Senate:

"EXECUTIVE DEPARTMENT,
ALBANY, *January* 7, 1850.

"I herewith transmit a document which I received during the recess of the Legislature, purporting to be a protest of certain chiefs and warriors of the Seneca nation of Indians, against an act passed by the Legislature of April

[24] Chapter 265, passed April 10, 1850, provided for the preservation of Washington's Headquarters at Newburgh. It seems from the Governor's message and the act, that the State acquired title to the property by means of a loan from the United States deposit fund, and the subsequent foreclosure of a mortgage given therefor, resulting in the purchase of the property by the State on foreclosure. By this act, the State reimbursed the deposit fund for the amount involved in the land purchased, and assumed permanent possession and control of the property.

last, in reference to their government, and asking a repeal of the said act.

In compliance with the request of the chiefs and warriors who unite in this protest, I respectfully lay their protest before the Legislature.[25]

HAMILTON FISH."

[See special message of January 19.]

January 9. To the Assembly: Transmitting resolutions adopted by the Legislature of Vermont relative to slavery.

January 9. To the Assembly: Transmitting resolutions adopted by the Legislature of Vermont, relative to

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[25] The Senate committee on Indian affairs considered the remonstrance presented by certain Seneca Indians against the new form of government recently prepared for that nation and confirmed by Congress and the Legislature, and on the 2d of April presented a report in which the subject was considered at some length. The report closed with a recommendation that a law be passed authorizing the Seneca Indians to choose their form of government, and to determine by vote whether they would accept the new constitution, or retain their former system of government. The report contains the following statement as to the former method of choosing chiefs:

"Until recently the administration of the government of these Indians was vested in the chiefs and head men of the nation. There are eight separate clans of Indians belonging to the Senecas, and each clan heretofore has had its own chiefs. The manner of electing their chiefs was well calculated to insure, so far as any provision could insure, from these unlettered sons of the forest, the selection of their wisest and best men for chiefs. In the first place, each clan selected its own candidate for the honors of the chieftainship. The wives and mothers as well as the warriors had a voice, and all must agree in the selection. When unanimity is arrived at in the clan, then the name of the candidate was presented to the chiefs of all the clans in reservation council. If approved by them, he is then presented to a council of the whole nation in general council, and if there approved he was invested with the rights, the powers and the insignia of office. He becomes then a chief of the Seneca nation.

It cannot be denied that the system was admirably calculated to bring forward and invest with power the wise and great men of the nation. It was to this system that the Seneca Indians were indebted for the great names that have so often adorned their history. It was under this system that Red Jacket, whose immortal eloquence can never be forgotten, was elected to the chieftainship. It was this system that gave to the Indian councils such mighty men as Cornplanter and the still surviving Governor Blacksnake. Under this system the Senecas have lived as long as we have any record of them, and were, if not an educated and progressive, at least a contented and united people."

See 1849, note 23, *ante*, p. 459.

the establishment of a bureau of agriculture in the department of the interior at Washington.[26]

January 14. To the Senate:

"EXECUTIVE DEPARTMENT,
ALBANY, *January* 12, 1850.

"In compliance with the resolution of the Senate, adopted on the 9th inst., and requesting the Governor, in his discretion, to communicate for the information of the Senate, any facts, papers or documents that may be in his possession relating to convictions upon the charge of vagrancy, and with regard to the present mode of empannelling jurors in criminal cases, I have the honor to transmit herewith certain papers and letters which have been addressed to me on the subjects referred to in the resolution of the Senate. A schedule of the accompanying papers is subjoined.

HAMILTON FISH."

The schedules included communications from Justices Edmonds, Gridley, Parker, Willard and Morse, District Attorney John McKeon and Dr. John D. Russ, Corresponding Secretary of the Prison Association. [See Senate Document, No. 43.]

January 19. To the Senate:

"EXECUTIVE DEPARTMENT,
ALBANY, *January* 19, 1850.

"I transmit a communication purporting to be a request in behalf of the council of the Seneca Nation of

[26] An act of Congress, passed May 15, 1862, established a department of agriculture under the supervision of a commissioner to be appointed by the President and Senate.

By an act passed February 9, 1889, the commissioner became secretary of agriculture, and a member of the President's cabinet.

Indians, that delay may be had before acting upon the protest of certain chiefs and warriors of that Nation, which I had the honor to transmit to the Legislature on the 7th inst. [See note 25.]

HAMILTON FISH."

January 19. To the Assembly: Transmitting resolutions adopted by the Legislature of Connecticut. The legislative records do not contain a copy of the resolutions, but they were probably those adopted by the Connecticut legislature at the May session, 1849, asserting the power of Congress to prohibit slavery in the territories and in the District of Columbia, and protesting against any extension of slavery or the admission of any new slave state.

January 19. To the Assembly: Transmitting the annual reports of the Adjutant and Commissary Generals.

January 29. To the Senate:

"EXECUTIVE DEPARTMENT,
ALBANY, *January* 29, 1850.

"In answer to the resolutions of the Senate, adopted on the 18th day of January inst., requesting the Governor to communicate to the Senate any statistical and other information in his possession, relating to Asiatic cholera, I have the honor to reply, saying that there is no statistical or authentic information relating to Asiatic cholera in the possession of this department.

HAMILTON FISH."

February 6. To the Assembly: Transmitting another communication from the Secretary of the Navy, relative to the proposed cession of land for the Brooklyn Navy yard. [See 1849, special message of March 17. *Ante*, p. 465. The cession was made in 1853.]

February 11. To the Senate: Transmitting "a communication from N. T. Strong in behalf of the chiefs of

the Seneca Indians, together with two memorials purporting to be from chiefs and warriors of the Seneca Indians, and a statement addressed to the Legislature of this State, relating to their alleged grievances under the operation of a law passed at the last session of the Legislature," confirming a constitutional form of government recently adopted by the Seneca nation. [See note 25.]

February 19. To the Senate: Transmitting a memorial from the chiefs, headmen and warriors of the Tuscarora tribe of Indians residing in Western New York, protesting against the proposition to confer citizenship on the Indians, and subject their property to taxation.

February 28. To the Senate: Transmitting a memorial from Peter Wilson and others, protesting against a repeal of the resolutions and act of the last session confirming the new Constitution of the Seneca nation. [See note 25.]

February 28. To the Assembly: Transmitting resolutions adopted by the Legislature of Rhode Island and Virginia on the subject of slavery.

March 1 and 2. To the Assembly and Senate, respectively: Transmitting a resolution adopted by the Legislature of Rhode Island thanking the Legislature of New York for a copy of the records relative to the boundary line between Rhode Island and Massachusetts as determined by commissioners on the 7th of April, 1741. [See 1849, special message of February 20, and note 22, *ante*, p. 457.]

March 2. To the Assembly: Transmitting resolutions adopted by the Legislature of Vermont on the 12th of November, 1849, confirming the power of Congress to prohibit slavery in the territories and in the District of Columbia, and protesting against the extension of slavery and the admission of other slave states.

March 7. To the Assembly: Transmitting resolutions adopted by the Legislature of Georgia, among other things denying the power of congress to prohibit the introduction

of slavery into the territories, declaring that "any and all territory acquired by the United States, whether by discovery, purchase or conquest, belongs in common to the people of each State, and thither the people of each state and every state have a common right to emigrate with any property they may possess;" that slaves were recognized as property by the constitution, that the Wilmot proviso was unconstitutional; that Congress had no power to interfere with the existence of slavery in the District of Columbia; that the refusal of non-slaveholding states to deliver up fugitive slaves was an intolerable outrage upon the southern rights; affirming Georgia's loyalty to the Union, "and that nothing short of a persistence in the present system of encroachment upon our rights by the non-slaveholding States, can induce us to contemplate the possibility of a dissolution."

March 15. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *March* 15, 1850.

"I transmit herewith the second report of Mons. Vattemare on international literary exchanges, exhibiting the progress of this enlightened enterprise during the last year.

This paper of Mons. Vattemare will sustain the interest which has heretofore attached itself to the system of which he is the founder.

I commend to your consideration the desire expressed by Mons. Vattemare, that the Legislature may see fit to sanction measures tending to secure the permanency of the agency.

HAMILTON FISH."

[See Assembly Document, No. 127, for M. Vattemare's report and the accompanying letter.]

March 15. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *March* 14, 1850.

"I transmit herewith a communication addressed to me by the British Consul in New York, which is accompanied by a letter from the Secretary to the Commissioners appointed by her Majesty the Queen of Great Britain for the promotion of the Exhibition of the Works of Industry of all Nations, to be holden in London in the year 1851, and also by a copy of the royal commission issued for this purpose.

The object of this communication purports to be the attainment of general publicity for a subject designed and, in my opinion, calculated for the benefit of the people of all nations, and especially adapted to give an efficient impetus to the industry and skill of those employed in the pursuits of productive labor.

It cannot be doubted that the productive industry of this country will be represented at the exhibition which is contemplated.

The object and plan of the exhibition is understood to be catholic and liberal; presenting a fair and equal competition to the industry of all parts of the world.

The distance of the place of exhibition suggests the propriety of extending such facilities as the state can afford to those who propose to present articles of the growth, produce or manufacture of the United States in competition at this "world's fair" with the productions of the Old World.

The accompanying papers request the designation of some proper channel of communication and of correspondence with the commissioners charged with the management of this exhibition.

It has occurred to me that no more appropriate organs of communication could be designated than the American Institute and the State Agricultural Society. I cannot

doubt that either of these associations, which have been so efficient in advancing the interests of American industry, will be a most cheerful agent in this undertaking. Its powers to advance the object in view would be increased by a recommendation from the Legislature of this State, of its attention and agency in this enterprise.

I further recommend that provision be made by law authorizing the transportation free of canal tolls over the canals and railroads of this State, of all articles the growth or product of the United States which are designed for exhibition at the proposed fair.

HAMILTON FISH."

[See Assembly Document 177, for the communications referred to in the message.]

March 19. To the Assembly: Transmitting resolutions adopted by the Legislature of Rhode Island, approving the Vermont proposition for the establishment of a bureau of agriculture in the Department of the Interior. [See note 26.]

March 25. To the Assembly:

Veto of a bill entitled "An act to provide for the speedy disposition of certain suits." [27]

"The object of this bill so far as it is designed to expedite the settlement of certain suits of high public interest has my entire concurrence; and the bill would have received my official approval but that there appears to be an omission possibly arising from a mistake in the engrossing which is calculated to prevent the object, which the bill seems to have been designed to effect.

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[27] The bill, to provide for the speedy disposition of certain suits, was not passed over the veto, but a new bill, omitting the clause which the Governor deemed objectionable, was passed and became a law, chapter 128, on the 1st of April.

The first section of the bill is in these words: "Every issue of fact joined or hereafter to be joined in any action brought by the Attorney General of this State pursuant to the joint resolution of the Senate and Assembly, of the tenth day of April one thousand eight hundred and forty-eight, or joined in any suit, or proceedings or *quo warranto,* shall have a preference at the court at which it shall be noticed for trial over all other causes; and every case made, special verdict rendered, and bill of exceptions taken on such trial; and every issue of law joined on the pleadings in such suit or proceedings; and every appeal from any judgment rendered in any such suit or proceeding shall have a preference at the argument thereof, in any court where the same may be pending."

It was doubtless the intention of the bill to have given a precedence in being tried, or heard upon argument, to the actions brought by the Attorney General under the concurrent resolutions of the Senate and Assembly of April, 1848, to test the validity of the manorial titles. It seems also to have been intended to extend this right of precedence to some other class of proceedings. But the phraseology of the bill in referring to the other class, is without definite limitation; and is such as would extend the preference designed for certain suits and proceedings, to all without discrimination, which may be noticed for trial; after the specification of the manorial suits, the bill extends the same preference to issues 'joined in *any suit* or proceedings or *quo warranto.*' It is difficult to conceive that this language would not embrace the entire calendar of the court, and give to each suit or proceeding an equal right of preference over all others.

If this bill were to become a law without a designation of the class of suits or proceedings (other than the manorial title suits) to which it is intended to give a priority of trial, it would probably be wholly inoperative in expediting the decision of any of those suits which it is so manifestly the

interest of the state as well as the dictate of justice and of sound public policy, should be brought to a speedy conclusion.

I therefore respectfully return the bill to the Assembly (in which it originated) with the objections which have presented themselves to me against its becoming a law in the form in which it has been passed."

March 26. To the Assembly: Transmitting another communication from the Secretary of the Navy, relative to the desired cession of land for the Brooklyn Navy yard. The cession was made in 1853.

March 26. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *March* 26, 1850.

"I present herewith a report from the Physician of the Marine Hospital, in answer to a call which I made upon him for information respecting that Institution.

The new organization of this hospital under the law of the last winter, has, as I am induced to believe, introduced a much improved system in its administration.

The report herewith submitted presents many interesting statistics, and I would respectfully suggest that provision be made by law requiring an annual report from the Physician of the Hospital, of the statistics and other matters connected therewith.

HAMILTON FISH."

March 26. To the Assembly: Transmitting a report and resolutions adopted by the Legislature of Mississippi, asserting that Congress had power to establish territorial governments, and ought to provide governments that would protect the property and interests of all the people of all the states, appropriating $20,000 to be used in protecting the sovereign and constitutional rights of the state in case

of the passage of any law by Congress containing the Wilmot proviso; and recommending a convention to consider means of protecting the interests of the slaveholding states from hostile legislation by Congress.

March 27. To the Assembly: Transmitting resolutions adopted by the Legislature of Maryland, protesting against the abolition of slavery in the District of Columbia.

March 28. To the Assembly: Returning a bill amending a statute relative to roads in the town of Coeymans on the ground that it was a three-fifths bill. The bill was passed again by a majority of all the members elected, three-fifths being present.

April 1. To the Senate:

Veto of a bill entitled "An act to extend the charter of the Schoharie Central Bridge Company."

"Section one of article eight of the constitution declares that 'corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws.'

The Schoharie Central Bridge Company was incorporated by an act of the Legislature passed April 16, 1822, (Laws 45th session, chap. 219,) for a term of thirty years. The charter will consequently expire in April, 1852.

The bill now presented to me, proposes to extend the charter of this corporation for thirty years from its passage. Its effect therefore is to give to an existing corporation a new existence beyond the term limited by its charter. Beyond that period it will therefore practically and substantially have the effect of a new act of incorporation. It will give existence to a corporation which without this special act would have no existence after the expiration of the thirty years limited in the original charter. In other

words, the bill in effect creates a corporation from a certain future day.

The power of the Legislature to create corporations by special acts, is confined to corporations for municipal purposes, and to cases where, in the judgment of the Legislature, the objects cannot be attained under general laws.

The object of the corporation whose charter it is now proposed to extend, is to build and maintain a bridge.

On the 11th of April, 1848, the Legislature passed a general law entitled, 'An act to provide for the incorporation of bridge companies,' (Laws 71st session, chap. 259,) authorizing the formation of corporations for the purpose of constructing and owning bridges across any streams of water. The 21st section of this act provides that any existing corporation, having for its object the construction and maintenance of any bridge whose charter shall expire, may be continued as a corporation by complying with the provisions of the act, so far as the same are applicable, on obtaining the consent of the supervisors of the county in which the bridge is situated.

In the absence of any general law authorizing the formation of corporations for any particular object, the enactment of a special act incorporating a company for such object, may perhaps in some cases be assumed as an indication of the opinion of the Legislature that in its judgment those objects cannot be attained under general laws. But the enactment of the general law above referred to, establishes that the objects of corporations of the character of that whose charter the bill before me proposes to extend, are such as can, in the judgment of the Legislature, be attained under general laws. Hence it follows clearly that the Legislature has not the power to create by a special act a corporation for those objects.

The question then presents itself, whether an act extending the duration of an existing corporation in violation of the spirit of the constitution, which prohibits the Legislature from creating by special act a corporation with simi-

lar objects to that which it is proposed to extend. Had the charter expired, there would be no doubt of the want of power in the Legislature to create by special act a corporation for the objects contemplated by the act which it is proposed by this bill to extend. And I cannot persuade myself that the fact that the charter of the company in question has not yet expired, can give the Legislature a power which it clearly would not possess had the charter expired before the attempt to exercise such power.

The Legislature of 1850 has no power under the constitution with respect to granting acts of incorporation, which may not equally be exercised by the Legislature of 1853.

The charter of the Schoharie bridge company will have expired by its own limitation in the year 1852. After that date and so long as a general law applicable to the formation of similar corporations shall remain in force, there can be no pretence of a power in the Legislature to pass a special act giving an existence for twenty-eight years to the company for whose benefit this bill is designed. In my opinion the Legislature cannot merely by anticipation exercise a prohibited power.

I do not doubt that the Legislature may constitutionally alter or amend, by a special law, an existing charter granted prior to the adoption of the present constitution, and in a case in which a corporation could not now be created, except under a general law, so as to enable the corporation the better to accomplish the objects of its creation, and with this view may modify its corporate powers. But such alteration or modification must be within the limits of the existence of the charter, and must not extend to the reviving or continuing of the charter beyond its limitation, the effect of which would be to create a new corporation.

Believing therefore that the bill referred to is in effect in contravention of the provisions of the constitution limiting the power of the Legislature to create corporations by special act, I am compelled to withhold from it my ap-

proval, and I respectfully return the bill for the further consideration of the Legislature."

The bill was not passed over the veto.

April 2. To the Legislature:

"EXECUTIVE DEPARTMENT,
ALBANY, *April* 2, 1850.

"I learn from the public journals that the Hon. John C. Calhoun died at Washington on the morning of Sunday last, [March 31]. His death is an event of interest and a source of grief to all sections of the country, in whose service nearly the whole of his active life has been spent. I believe therefore that I consult the public sense of propriety not less than my own feelings, in giving you this official information of his decease.

Mr. Calhoun became connected with the federal government at an early age, and died in its service. He has been a member of the House of Representatives, Secretary of War, Secretary of State, Senator in Congress, and Vice-President of the United States.

In each of these stations he has been distinguished by ability, integrity and independence. He has taken a very prominent part in every great question which has agitated the country during the last forty years, and has exerted a commanding influence upon the whole course of our public policy.

In his death the nation has lost a statesman of consummate ability and unsullied character.

It is fitting that this State should evince sorrow at his death, by such action as her representatives may deem appropriate.[28] HAMILTON FISH."

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[28] The Legislature on the 2d of April, adopted resolutions on the death of Mr. Calhoun, which were reported by a joint select committee, referring especially to the "pre-eminent ability, the unsullied personal character, and the high minded independence which, throughout his life, distinguished his devotion to the public service." The Governor was requested to send a copy of the resolutions to the Governor of South Carolina for transmission to Mr. Calhoun's family.

April 3. To the Assembly:

Veto of a bill entitled "An act to authorize the city of Buffalo to subscribe to the capital stock of the Buffalo Water Works Company."[29]

"A bill has been presented to me which originated in the Assembly entitled, 'An act to authorize the city of Buffalo to subscribe to the capital stock of the Buffalo water works company,' which appears to me to be in conflict with the provisions of section sixteen, article third, of the constitution which provides that no private or local bill which may be passed by the Legislature 'shall embrace more than one subject, and that shall be expressed in the title.'

This is a local bill, and the title expresses the subject to be the granting authority to the city of Buffalo to subscribe to the stock of the Buffalo water works company; several sections of the bill are devoted to the granting of the power and terms of the subscription, and directing the mode of raising the funds for this object.

The seventh section however provides that 'the capital stock and property of the said Buffalo water works company shall be exempt from taxation for state, city or county purposes, for the term of three years after their works shall be so far completed as to enable them to derive a revenue from water supplied for the use of private houses in said city of Buffalo.'

It does not appear from the bill that the exempting of the property of the corporation from taxation is necessarily connected with the authority granted to the city of Buffalo to subscribe to the capital stock of the corporation. It seems to stand as a distinct and separate subject, and therefore renders the bill liable to the objection, that it conflicts with the section of the constitution above referred to.

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29 The Buffalo Water Works Company's bill was not passed over the veto, but a new bill, omitting the seventh section, which was the particular object of the Governor's criticism, was passed and became a law, chapter 174, on the 5th of April.

I therefore respectfully return the bill for the further consideration of the Legislature."

April 4. To the Senate:

Veto of a bill entitled "An act in relation to the Society for the Reformation of Juvenile Delinquents in the City of New York."

" The bill provides that certain premises now under lease to the managers of the society for the reformation of juvenile delinquents in the city of New York, shall, upon the sale thereof, be released and discharged from the lien and incumbrance of the sinking fund of the city of New York; and that instead of such lien and incumbrance any premises ' which shall be procured by the said society for the site and erection thereon of their buildings,' shall be subject to the lien and incumbrance of said sinking fund in the same manner and to the same extent that the premises now occupied by the said society are now subject thereto.

The fee of the property now under lease to this society, which it is proposed to discharge from the lien of the sinking fund, belongs to the corporation of the city of New York, and did so belong on the 22nd of February, 1844. The land is leased to the society for the use of the House of Refuge, to revert to the city whenever it shall cease to be thus used.

On the 22nd February, 1844, the mayor, aldermen and commonalty of the city of New York adopted an ordinance, providing for the redemption of the city debt, and the payment of the interest thereon, (corporation ordinances, revised 1845, page 211,) whereby all money received and to be received from several sources, and among others ' the net proceeds of all sales of real estate belonging to the corporation, when sold ' were pledged, appropriated to, and constituted and formed a fund called ' The Sinking fund of the city of New York for the redemption of the city debt ' until the whole of the stocks of the city of New York shall be finally and fully redeemed. This ordinance was

recognized by an act of the Legislature passed May 13, 1845, (laws 68th session, chap. 225) which act declared that the ordinance should not be amended without the consent of the Legislature, except by appropriating additional sources of revenue thereto. The object of this prohibition was to prevent the withdrawal of any of the property or sources of income pledged to the sinking fund, whereby the security of the creditors of the city might be in any degree diminished.

It is now proposed to release the land occupied by the House of Refuge, constituting a part of the property pledged to the creditors of the city of New York for the redemption of its public debt, from the lien of that debt, and to substitute in lieu thereof a lien upon ' any premises which shall be procured by the said society for the site and erection thereon of their buildings.' It does not appear from the bill what shall be the value of the premises thus to be procured by the society. If (as is alleged) the premises thus to be procured shall be of far inferior value to the land released from the lien of the sinking fund, it is manifest that a wrong will be committed upon the creditors of the city who have loaned their money upon the faith of the security of these lands.

Another objection to the terms of the bill is that while it proposes to release from the lien of the sinking fund, lands belonging to the city of New York now leased to the society for the reformation of juvenile delinquents it proposes to transfer the lien from the property of the city to premises which shall be procured by the society itself. The power of the State to transfer an incumbrance upon property belonging to one party, but occupied by another, to other property which is about to be procured by the occupant, will scarcely be asserted, and yet this is precisely what the bill proposes to effect.

The credit of the city of New York stands deservedly high and should not in any degree be impaired. The sanc-

tity of public faith and the inviolability due to contracts and public engagements, require that if the public necessity demands a substitution of securities for any portion of those pledged for the redemption of those engagements, care be taken that those substituted be fully of equal value with those released, and that no room be left for doubt as to the validity of the lien imposed upon the substituted property.

The Legislature has prohibited the corporation of the city from altering the ordinance which created the lien by diminishing the security. It has thus in a degree, assumed the guardianship over the fund, and the protection of its inviolability. It should therefore be held to a rigid scrutiny into any proposed alteration of the securities, which have been pledged to the sinking fund.

The character of the corporation of the city of New York may afford an assurance that no advantage will be taken of the manner in which this bill has been drawn, to diminish the amount of security to the fund for the benefit of its creditors. But this reliance will not justify the enactment of a law, which, by permitting a wrong, that may not, and doubtless will not be committed, will yet stand upon the statute books and may be appealed to in future times as an evidence of improvident legislation, if not as a precedent for the commission of acts such as this bill would sanction.

I have the less hesitation in returning this bill from the fact that I am convinced that the parties who have asked it, contemplated no such action as would be inconsistent with the most scrupulous regard to the integrity of the entire fund, to which the lands referred to in the bill are pledged. Should the Legislature not deem the objections which I have presented of sufficient weight to arrest the enactment of the bill into a law, my duty will have been discharged in presenting those objections. Approving of the objects which I understand to be proposed by the cor-

poration of New York, and the society for the reformation of juvenile delinquents, I trust that a bill to effect those objects can be readily framed which shall be free from the objections which compel me, to return this bill, without my signature, to the Senate."

The bill was not passed over the veto.

April 5. To the Senate:

Veto of a bill entitled "An act to incorporate the Barryville and Shehola Delaware Bridge Company."

This bill is liable to the same objections of want of power on the part of the Legislature to create by a special act, a corporation for the objects proposed, which I had the honor to submit the Senate on the first day of April instant, when I returned the bill to extend the charter of the Schoharie Central Bridge Company.

It proposes to create a corporation for the purpose of erecting a bridge across the Delaware river, after that the Legislature has enacted a general law for the incorporation of bridge companies.

The fact that the stream over which the proposed bridge is to be constructed, is the dividing line between this and an adjoining State, may possibly exhibit a necessity for some modification of the general law now in force, for the incorporating of bridge companies. But it cannot have effect to relax the prohibition which the constitution has imposed upon the power of the Legislature to create corporations by special acts, for objects which can be attained under general laws.

A charter granted by special act of the Legislature of this State, would not authorize the corporation thereby created, to construct its bridge within the jurisdiction of the State of Pennsylvania, without authority from that State. It would only confer corporate existence and powers, together with such rights as the wisdom of the Legislature might think fit to grant, over so much of the stream as lies within the limits of our own State.

The same corporate existence and powers may be obtained under the general law.

In returning this bill without my signature, I beg leave to repeat what I suggested in a recent message to the Senate, returning with objections, the bill to extend the charter of the Schoharie Central Bridge Company. That so long as a general law exists, authorizing the formation of corporations for specific objects, I must consider the constitutional prohibition against the power of the Legislature to grant special charters to companies for the same objects, as wholly operative and conclusive, against the power to grant such special charter.

In the absence however, of a general law authorizing the formation of corporations for specific objects, a proper respect for the wisdom and discretion of the coordinate branches of the government, will compel me to presume that the Legislature has not attempted the exercise of a prohibited power, but has carefully considered the objects proposed and has, by the passage of the special act, determined that it is a case ' where in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws,' even though, in my own judgment, such objects might be attained under general laws.

The section of the constitution restraining the power of granting special charters submits the decision of the question whether the object of the corporation can or cannot be attained under general laws, to the judgment of the legislature, not of the executive.[e]

In case of difference of opinion, I shall therefore feel bound to defer my own, to the judgment of the Senate and Assembly, whom the constitution makes the arbiter on the question. I know of no other rule of action in such cases that will prevent collision between the separate branches of the government, or that will avoid an undue assumption on the part of the executive, over the free exercise of the legislative judgment.

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[e] Const. 1846, art. 8, § 1.

I may be permitted to add that at the close of the last session of the legislature, in the extreme pressure incident to the last hours previous to the adjournment (into which unfortunately so much of the business of the whole session is apt to be crowded, that but little opportunity is afforded the executive for even a cursory examination of the bills presented for his signature) I did inadvertently give my approval to a bill for the incorporation of a company, from which I should undoubtedly have withheld it, had the object of the bill attracted my attention.

I refer to this for the purpose of showing the necessity during the remaining days of this session of a most careful consideration by the legislature, of the various bills that may be presented for its final action, and for the purpose of suggesting that while I shall endeavor to exercise the most exact vigilance to prevent the enactment of laws which may infringe any of the provisions of the constitution, the very brief time allowed to the executive, toward the close of the session, for the examination of bills and the consequent hasty investigation upon which he is compelled to act, necessarily subject him to the liability of mistake.

The extent of this liability may be appreciated by a reference to the fact that during the last five days of the sitting of the last legislature there were presented to me no less than two hundred and one bills extending over three hundred and fifty-three pages of the session laws.

The bills presented for executive approval have previously occupied the attention of the Senate and Assembly with the advantages of deliberate discussion and debate, and are by them held under consideration so long as doubts are entertained with regard to their propriety. But the large number of bills presented to the executive toward the close of the session, are to be acted upon by him, if at all, within a very few days, and without the benefit of the suggestion of doubts, or of difficulties, by other minds.

I therefore earnestly appeal to the legislature for the exercise of its utmost vigilance over the bills proposed for

its action during the remaining days of the session, assuring them at the same time of my determination to discharge to the best of my ability, my full share of the responsibility and of the duties connected with the enactment of laws which belong to my office.'"*

The bill was not passed over the veto.

April 6. To the Assembly:

Veto of a bill entitled "An act to authorize the city of Buffalo to fund the floating debt of said city, and to amend an act entitled an act to consolidate and amend the act to incorporate the city of Buffalo, passed April 20, 1832, and the various acts amendatory thereof, passed April 17, 1843, passed March 29, 1849."

The bill was vetoed solely on the ground that it violated the provisions of article 3, section 16 of the Constitution, and the Governor suggested that the title be amended so as to avoid the objection.[30]

April 8. To the Assembly: Transmitting a memorial and resolutions presented by the Legislature of Mississippi to Congress, urging the enactment of a law "extending the provisions of the act of 1848, granting land or scrip to the volunteer soldiers of the late war with Mexico to the officers and soldiers of the war of 1812."

April 9. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *April* 9, 1850.

"I transmit herewith a communication from Mons. Vattemare, announcing that he is instructed to present to the Legislature of this State, in the name of the National

* See People v. Bowen (1860) 21 N. Y. 517, holding that the Governor had power to sign bills after the Legislature had adjourned. By an amendment to Art. 4, sec. 9, adopted in 1874, the power of the Governor to act on bills, was limited to thirty days after the adjournment of the Legislature.

30 The Legislature adopted the Governor's suggestion as to the Buffalo funding bill, and passed a new bill, which became a law, chapter 203, on the 8th of April.

Assembly of France, a series of volumes in continuation of the Journals, Reports, &c., of the legislative body — the first volumes of the collection having been previously presented.

I anticipate the arrival of the volumes referred to in M. Vattemare's letter with this communication, lest the approaching adjournment of the Legislature prevent the announcement of this new addition, which Mons. Vattemare's system and agency have been the means of contributing to our State Library.

It will be observed with satisfaction by those who have witnessed and appreciated the self-sacrificing efforts of M. Vattemare in advancing this liberalizing system of which he is the author, that the letter herewith communicated contains a copy of one addressed to him by the Questors of the Chamber of Deputies of France, recognizing him as the agent for these interchanges of literary treasures, and ascribing to him the high merit of having established this new and friendly intercourse between the nations of the world.

This letter was not needed to justify the members of the Legislature of this State in their recent testimonial to M. Vattemare; the evidences of his labors and of his zeal are to be found on every shelf of our library. Still this letter shows that M. Vattemare has merited the confidence which has thus been freely extended to his efforts and to his disinterestedness by the members of the Legislature.

HAMILTON FISH."

[See Assembly Document No. 192, for the letters referred to in the message.]

April 10. To the Senate:

Veto of a bill entitled "An act to incorporate the Oswego Dry Dock and Marine Railway Company."

"I am under the necessity of withholding my approval, for reasons similar to those which I had the honor to sub-

mit in connection with the bill to extend the charter of the Schoharie central bridge company.

The Legislature has enacted a general law authorizing the formation of corporations for manufacturing, mining, mechanical, or chemical purposes, (Laws of 1848, chapter forty, page fifty-four,) which embraces the general objects of the corporation proposed to be created by this bill.

While this general law remains in force, I cannot believe it competent for the Legislature to create by a special act a corporation for objects which may be attained under such laws.[f] If I am mistaken in this opinion, I shall be happy to see a laudable enterprise undertaken under the direct sanction of the Legislature. But believing that the objects of the proposed corporation may be thus attained, I respectfully return the bill to the Senate."

The bill was not passed over the veto.

April 10. To the Assembly: Transmitting resolutions adopted by the Legislature of Texas, protesting against the passage of any law by Congress, which would have the effect to deprive the citizens of any state of the right to carry into the territories any property they might own, and keep and use such property in the territories in the same manner as in the State from which they had removed; and protesting also against the abolition of slavery in the District of Columbia.

April 10. To the Assembly:

Veto of a bill entitled "An act to incorporate the New York Juvenile Asylum."

"It is with great reluctance, overcome only by a strong sense of duty, that I return to the Assembly, where it originated the bill entitled 'An act to incorporate the New York Juvenile Asylum' with my objections to its passage.

[f] Const. 1846, art. 8, § 1.

This reluctance is produced by observing the benevolent objects of the bill which seeks to rescue from destitution, ignorance, vice and crime, the young children of that city, who are suffered by their natural protectors to infest its streets and public places, exposed and tempted to vicious indulgences, and thus prepared for a career of infamy and crime; while I would thus accord not only approbation but commendation of the benevolent motives and humane objects of those philanthropists who have formed the society in question, I am bound by a superior obligation to watch and guard against the invasion of personal rights of the most sacred character which it seems to me are assailed by this bill.

It authorizes any policeman or private citizen who is a voter to arrest and bring before certain magistrates of the city any child over five and under fourteen years of age who shall, 1st. have been found begging for alms in any street, or public place, or from door to door; 2nd. who shall have been found in want or suffering, apparently abandoned, or improperly exposed by its parents; 3rd. who shall have been found under suspicious circumstances, or in apparent destitution, on or about the wharves, streets or crossways; 4th. or who shall have been found habitually in the streets or public places, not under the care of its parents and apparently in need of the instruction and control of the society.

If it appear to the magistrate that the child comes within either of the above classes, that it does not habitually attend a school and is a fit subject for the asylum, he may commit it to the corporation, to remain under the guardianship of its directors until discharged by law. The parent or guardian of the child may obtain its release by proving the negative of the facts and circumstances under which it was committed, or by giving security that the child shall not be again found in the like condition, and that it shall be regularly sent to one of the common schools of the

city. The other provisions of the bill are probably as well guarded as any could be on such a subject and for such a purpose.

But the provisions already quoted are the vital part of the bill, and they strike at and sunder the relations of parent and child in a manner and to an extent hitherto unprecedented in this State or country, and it is believed in any civilized nation. The vagueness and generality in the description of the conditions of the child which authorize his arrest, seem to give an unbounded scope to the interference of any one who may choose for good or bad purposes to wrest a child from its natural protector.

Every person who is a voter, may exercise this authority, without any other responsibility than a personal liability for its abuse, and having obtained possession of the child may or may not carry it before a magistrate.

This license of private arrest is at war with the elementary principles of liberty, and is altogether too dangerous to be entrusted to the mixed population of a great city. But if exercised in good faith, and if the child be committed by a magistrate to the custody and care of the society, it is then in the hands of persons not holding any official station, nor liable to any of its responsibilities. This is carrying corporate authority to an alarming extent and the guards which are placed around it by requiring reports and the visitations of committees of the common council of the city, do not and cannot sanctify the principle, while they betray a consciousness that the principle is unsound.

There is scarcely any power given by the bill to the directors of the asylum, which is not now conferred by law upon some responsible public officer. By the eighteenth section of chapter eleven of the session laws of 1833, the mayor, recorder or any two aldermen or special justices of the city of New York are required and commanded to commit to the almshouse or such other suitable place as the common council may designate, any child found in the con-

ditions described in the first and second sub-divisions of the tenth section of the bill, which have already been quoted, there to be detained, educated and employed until discharged or bound out as apprentices by the commissioners of the almshouse. These powers trenching greatly on the domestic relations, the bill proposes to transfer to the directors of a private institution. Surely before this is done, there ought to be the strongest evidence that the public officers have failed in the performance of their duties, and that there is no probability of finding any who will discharge them.

The third and fourth conditions specified in the tenth section of the bill and already quoted, are not provided for by any existing law, and seem to me beyond the range of legislation. Children found under suspicious circumstances or in apparent destitution, on or about the wharves, streets or crossways, may be arrested, and so may children found habitually in the streets or public places not under the care of their parents, and apparently in need of the control and instruction of the society.

In the one case, apparent poverty and in the other, mere idleness, are sufficient causes for wresting a child from the care, affection and watchfulness of its parents and committing it to the custody of strangers. Hard as is the lot of poverty, its rigor is ordinarily much alleviated by the affectionate intercourse of children with parents; and it may be much doubted, whether the removal of their offspring from their immediate control and sympathies, will not also remove some of the most powerful motives which a kind providence has planted in the human heart to good conduct and industry.

The fourth condition is liable to the same objections and to an additional one arising from its indefiniteness. Children habitually in the streets or public places, without either parent, compose a large part of the moving popula-

tion of the city thoroughfares, and if all should be liable to be taken up and carried off by any voter, there are few domestic hearths in the city, that would not be filled with desolation and sorrow.

The means of extricating the child from the care of strangers holding the station of directors of a private corporation, are such as could seldom be complied with by the poor. The giving of security by those who have nothing to pledge as an indemnity to their sureties, is sufficiently difficult for any purpose to obtain it when the penalty is to be forfeited by the child being again found in one of the conditions which would justify its arrest, such as being found in want, abandoned by parents or found in apparent destitution, on or about the wharves, streets or crossways, or habitually idle in the streets or public places, would be next to impossible; and when to all these is added the further obligation of sending the child to a common school, whether its parents can provide it with decent clothes and necessary books or not, and the difficulty of procuring security for such an undertaking, become insuperable.

The consequence must be in most cases that a child arrested by any voter and consigned to the asylum, if he belong to poor parents will be severed from them and all their kindly influence and genial affections, and brought up a dependent outcast by persons probably of a different faith from that of its father or mother. I would not speak harshly, but it is impossible to carry out the consequences of the proposed provisions without describing a state of things that is repulsive to every kind feeling of our nature.

There are limits beyond which human legislation cannot reach, classes of cases that must be left to that good providence that rules the world by humane motives, affections and sympathies, as well as by other means. The imperfect obligations, as they are called by moralists, can be enforced only by the divine law. Human interference utterly fails

and produces injuries more serious than the evils it would correct.

Of this description do I consider the bill under consideration. It violates private right in the most sacred and tender of the domestic relations, it clothes private citizens with a dangerous and unnecessary authority, and it substitutes for the regular action of responsible public officers that of irresponsible directors of a private corporation."

The bill was not passed over the veto.

April 10. To the Assembly:

Veto of an act entitled "An act to incorporate the Thistle Benevolent Association in the city of New York," and of a bill entitled "An act to incorporate the Female Academy of the Sacred Heart in the city of New York," and a bill entitled "An act to incorporate the firemen of the village of Williamsburgh."

"The object of these several incorporations are highly praiseworthy and meet my entire approval, but they appear to me to be objects which may be attained under general laws now in force. The first section of article eight of the Constitution prohibits the creation, by special act, of corporations, except for municipal purposes and in cases where in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws.

We already have general laws in force for the formation of academies, and of benevolent and charitable associations. These laws appear to me to embrace the objects contemplated by the several bills above mentioned. If I am correct in this, it follows that the Legislature is prohibited by the constitution from the creation by special act of corporations for such objects.

I therefore respectfully return these bills for the further action of the Legislature, with this statement of the objections that compel me to withhold my approval."

The bills were not passed over the veto.

April 10. To the Assembly:

Veto of a bill entitled "An act in relation to the court of appeals, and for the relief of certain suitors therein."

"I regret to be under the necessity of withholding my approval, and of returning the bill.

The first section of the bill establishes a rule that is wholly prospective, and is free from objection.

The second section is retroactive in its effect. It provides for a rehearing of a class of cases in which the judgment of the court of last resort has already been rendered, and under which, the rights of the parties to those suits have become settled, and other rights may have been acquired by third parties, strangers to the original proceedings who have for valuable considerations, become interested in the subject matter involved in the suits thus decided. These parties have relied upon the good faith of the State which has hitherto never recognized the doctrine that a judgment or decree of a court legally entered and made, could be disturbed in any other way than the usual course of judicial decision, a judgment of the court of last resort finally entered in pursuance of existing laws, has ever been regarded as the final settlement of the rights of the parties to the suit in which such judgment was entered, and of those claiming under such parties. The Legislature of the State of New York has never, to my knowledge, attempted an interference with the stability of judgments thus rendered.

The class of cases which this and the succeeding section of the bill propose to unsettle, are those in which a judgment of affirmance of the decision appealed from has been entered since the eleventh of April, 1849, by reason of an equal division of the judges of the court of last resort.

The mode of affirmance has been well known, and long used in this state. It was the prevailing rule in the old court of errors, and is in compliance with the established

principles of the common law, and in conformity with the decisions of the Supreme Court of the United States. It was expressly enacted in the code of 1849, which was adopted on the eleventh of April in that year. The fourteenth section of this code, is in these words: 'The concurrence of five judges shall be necessary to pronounce a judgment. If five do not concur, the judgment or order appealed from, shall be affirmed, unless the court order a rehearing.'

The judgments to be affected by the second and third sections of the bill have therefore been rendered in accordance with the strict provisions of an existing statute, as well as in accordance with a long recognized principle as applicable to courts of review.

It appears too from the section of the law of 1849 above quoted, that the Legislature had granted to the court of appeals the right to order a new hearing in those cases where the concurrence of five judges had not been obtained. The parties appellant in the cases to be affected by the sections of the bill now under consideration have therefore had the benefit of this right to a rehearing, and yet the third section of the bill provides that where the record and proceedings have been remitted to the court whose decision was appealed from, a bare certificate of the fact that the judgment of the court of appeals had been rendered in accordance with one of the modes of affirmance prescribed by statute shall be sufficient, to cause the proceedings again to be transmitted to the court of appeals.

As it was in the power of the parties in all the cases contemplated by this third section to submit the question of a rehearing to the court of appeals, before the record and proceedings appealed from, were remitted to the court below, it is to be presumed, that they have done so in all cases where they considered it proper, and as such application must have been denied to bring the case within the bill under consideration, the effect of this section is a legisla-

tive reversal of a refusal by the court to order a new hearing. It is an indirect review by the Legislature of a judicial decision.

Our government is one of distributed powers. The judiciary, the Legislature and Executive, exercise their several functions separate and independent, each of the other.

This principle of distributed, and independent powers lies at the very foundation of our government, and is the greatest safeguard and protection of the rights and of the liberties of the governed; a law violating this principle has already been pronounced unconstitutional by our Supreme Court.*

Of the three co-ordinate departments among which the powers of the government are distributed, the judiciary is that one whose rights need the most careful protection. Being wholly administrative, and having no voice in the enactment of laws, it is the most likely of the three to suffer from the encroachments of those to whom is entrusted the power of legislation. It needs therefore the more careful protection in the discharge of the appropriate powers entrusted to it, and when those powers have been exercised in accordance with the rules prescribed by the laws of the State, its decisions should stand.

The principle upon which this bill is framed appears to me to be dangerous in the extreme, and to be wholly at variance with those principles of our government which have been stated, and a strict and rigid adherence to which is essential to the preservation of free government, and the protection of the person and property of the citizen.

It is true that the bill, in its terms, proposes only to give a right of rehearing, and this it may be urged goes only to the remedy. But the rehearing in itself, opens the judg-

* See Jackson ex dem. Ten Eyck v. Frost (1826) 5 Cow. 346, denying the power of the Legislature to determine the rights of parties to land without their consent. See also People ex rel. McDonald v. Keeler (1885) 99 N. Y. 463, as to restrictions on the power of the Legislature to exercise judicial functions.

ment rendered, and divests the rights acquired under it. It is therefore not merely remedial; it destroys rights and interests acquired under the sentence of the law.

The Legislature could not annul a single judgment, being valid when it was rendered. How is it possible that they can annul a class? It cannot be pretended that the judgments which are to be opened and subjected to a rehearing under the operation of this bill were not valid when rendered. It may be that some particular case may have occurred, calculated to excite sympathy, in which the operation of the existing laws, may seem to have worked hardly upon one of the parties. But considerations of this nature should never be permitted to influence the decision and settlement of far reaching questions, involving principles of vital magnitude and importance.

The danger of the principle of the bill being extended to supposed analagous cases, should awaken our most serious apprehensions.

It now proposes that the concurrence of five judges shall be requisite to render a judgment, and that a certain class of judgments heretofore legally rendered, shall be opened. Next year it may be thought that six judges should concur, or that some other rule be established, whereupon all the judgments of this year may in like manner be affected. If judgments rendered legally, during the past year may be disturbed, why may not those rendered one, five, ten or twenty years since? No lapse of time could add to the security of judgments.

If the Legislature can properly exercise the right assumed by this bill, it may virtually annul a decree of a court or drive the court through repeatedly forced rehearings into a decision contrary to its own opinion of the law, and the rights of the parties.

This will be the natural and necessary result from striking at the stability of judicial judgments, and from subjecting the judicial power to legislative interference in

the manner proposed. Against this the only security to the people is in the distribution of the powers of government into efficient departments, whose legal and constitutional action shall be wholly independent.

It is not necessary for the purposes of the action which in pursuance of the constitution of the State, I am required to take upon this bill, that I should show that the bill is in conflict with any express provision of the constitution either of this State, or of the federal government, although it is believed that the bill has been shown to be in violation of the general provisions of our State constitution.

Perhaps the courts would not hold themselves competent to declare a legislative act void, simply because it may be shown to be against natural justice, and they might say that the Legislature (possessed of an equal right of opinion,) had passed an act which in the opinion of the court was inconsistent with the abstract principles of natural justice.

That view imposes the stronger reasons for caution before bills are enacted into and become laws, to see that no principles of natural justice are violated by the proposed law, that no principles are adopted inconsistent with the system which lies at the very foundation of our government.

Retrospective legislation is in all cases hazardous, and in most, if not in all cases, subversive of private right. In the very analagous case of a limitation upon writs of error, universal in its terms, our Supreme Court held that it should not be deemed retrospective.*

I believe this bill to have the ill effects of retrospective legislation; evils, which no man of experience can fail to

* See also Germania Sav. Bank v. Suspension Bridge (1899), 159 N. Y. 362, denying the power of the Legislature to give a new right of appeal after the rights of the parties in a judgment have become fixed by the lapse of time prescribed by statute.

appreciate; that it adds to these evils the temptation to defeated suitors to besiege the Legislature for new laws upon the effect of judgments; that it proposes to unsettle, and to disturb rights which have been determined in due course by judicial decisions; that in its results it must lead to an interference on the part of the legislative power, with the independent action of the judiciary, and thus tend to the destruction of the greatest safeguard which our system of government affords to the rights of person and of property.

For these reasons I cannot give to the bill my approval. I therefore respectfully return it for the further action of the Legislature."

The bill was not passed over the veto. [See Governor Seymour's veto of the Canandaigua highway bill, 1854, April 3, which involved a similar principle, *post,* p. 771.]

April 10. The Legislature adjourned without day.

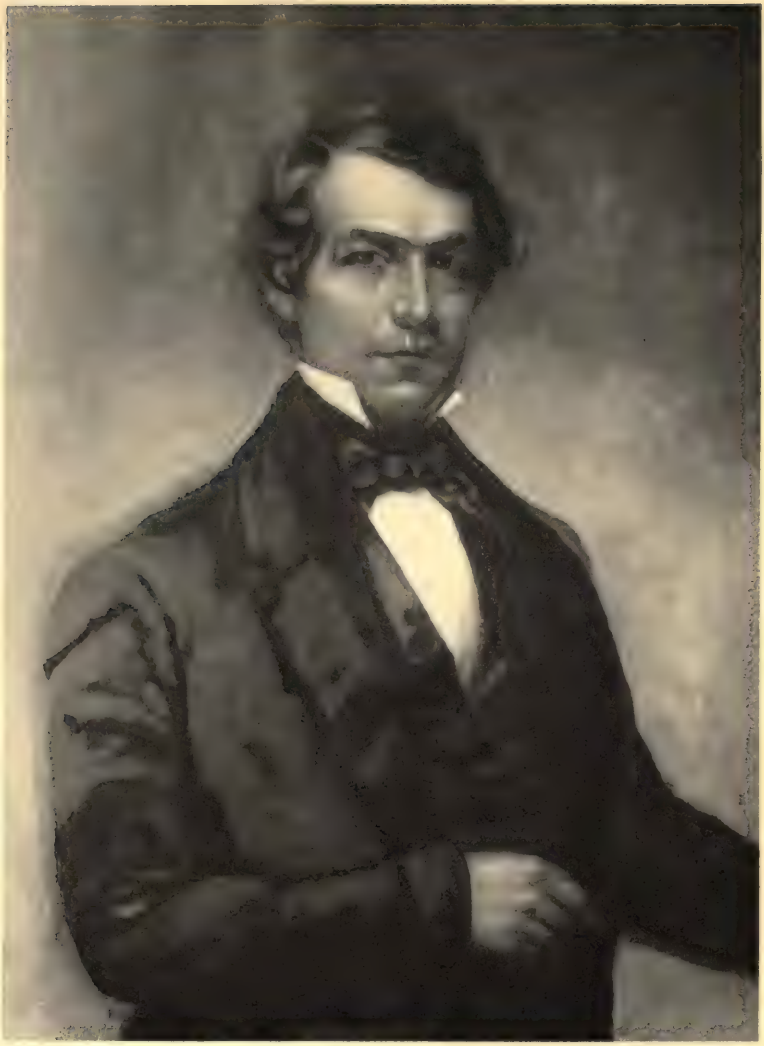
WASHINGTON HUNT, Governor.

ANNUAL MESSAGE.

FELLOW CITIZENS OF THE SENATE AND THE ASSEMBLY.—In taking a general survey of the condition of the Commonwealth, whose interests have been entrusted to your charge by a confiding people, we witness the most gratifying evidences of public prosperity. It is impossible to contemplate the varied blessings which have fallen to our lot, as a people, without emotions of fervent gratitude to the Supreme Being, whose benignant favor has protected and sustained us through all past vicissitudes.

The State continues to advance with august strides on its upward mission of freedom and civilization. The republican institutions reared by our ancestors, and preserved in full vigor by the enlightened vigilance of the people, have been vindicated by experience, as the system of government most favorable to the dignity and happiness of the human race. Some of those institutions were reformed and liberalized by our new Constitution. Political power was brought nearer the people, by investing them with the direct choice of their judicial and administrative agents, and it is a source of high felicitation that the successful result of this organic change has furnished fresh proof of the capacity of our citizens for an intelligent discharge of the responsibilities of self-government.

At no former period in our history have the affairs of the State presented a more encouraging aspect. The year which has recently closed was peculiarly prosperous and auspicious. The pestilence which visited our cities the previous year, and which continues its desolating ravages on some portions of the continent, disappeared beyond our borders and was followed by a season of unexampled public



Washington Irving

health. The earth yielded an unusual abundance to remunerate the toil of its cultivators, and industry in other forms, including many branches of trade and manufactures, found active and profitable employment. With our rapid progress in wealth and population, it is gratifying to observe the constant advancement of our people in moral and intellectual improvement. The wider dissemination of knowledge among the masses, the influences shed abroad by our seminaries of learning, the constant increase of religious and benevolent institutions for the alleviation of human sorrows, the peaceful conquests of invention and the arts, all tend to elevate the condition of society and to strengthen the foundations of popular government. These genial influences, combining to augment the happiness and exalt the character of the State, have been cherished by the liberal spirit of past legislation; and I cannot too earnestly commend the enlightened action of your predecessors, in this regard, and especially in seconding the efforts of humane individuals to improve the moral and physical condition of the unfortunate and the humble, as an example worthy of your emulation.

It affords me much satisfaction to congratulate you on the sound and healthful condition of our State finances. It became my duty before retiring from the office of Comptroller, to prepare an annual report exhibiting the condition of the Treasury, and of the several funds at the close of the last fiscal year, to which, with the suggestions therein contained, I would respectfully invite your attention.

It appears that after meeting all the appropriations payable during the last fiscal year, from the ordinary revenues, there remained a balance in the General Fund at the close of the year, of $54,521.28.

It is estimated that the receipts of the current year, from ordinary sources, will be sufficient to defray all the usual expenses of the State, and that the resources of the General Fund, as now established, will be found sufficient at all

times for the support of the government without an increase of debt or taxation. There is an evident necessity, however, for economy in the expenditures; and I trust you will feel the importance of keeping the appropriations within the reliable means of the treasury. In addition to the ordinary current revenues, the Comptroller's report exhibits certain balances due to the General Fund from arrears of taxes and other sources, from which it is believed the treasury will realize over $350,000 within the ensuing two years. It is with special reference to this resource that I deem it expedient in the present communication to recommend some appropriations for new institutions and improvements, which are conceived to be essential to the public welfare.

The aggregate amount of the State debt, on the 30th day of September last, was as follows:

Canal debt	$16,171,109.16
General Fund debt	6,359,693.32
	$22,530,802.48

exclusive of the stock loaned by the State to certain railroad corporations. It will appear from the report of the Commissioners of the Canal Fund, that the operations of the Sinking Fund are steadily reducing the canal debt. The application of the canal revenues in the manner prescribed by the State constitution, will discharge the entire State debt now existing, in the year 1868.[a]

Our canals continue to yield a rich return. The amount received for canal tolls, including interest, rents, &c., during the last fiscal year, was $3,486,172.30, being a small increase upon the receipts of the preceding year. After paying all the expenses of superintendence, collection and repairs, and $1,850,000 into the Sinking Funds and the General Fund, a surplus remained from the revenues of the last fiscal year

[a] Const. 1846, art. 7, §§ 1, 2, 3.

of $800,206.49, applicable to the completion of the Black River and Genesee Valley canals, and the enlargement of the Erie canal.

Previous to the last season of navigation, a considerable reduction was made by the Canal Board in the rates of toll on certain leading articles of transportation. Opinions will probably differ as to the precise effect of this reduction upon the trade and income of the canals; but it is generally believed that it attracted additional tonnage sufficient to equalize the diminution of revenue.

Serious apprehensions are entertained that the trade of the Erie canal will be impaired by the competition of railroads and other rival avenues in and out of the State, unless early and effectual measures are adopted to cheapen the expense of canal transportation. It is conceded on all hands that no material reduction can be made in the cost of canal freight without reducing the rates of toll, until the enlargement of the Erie canal shall enable our forwarders to increase the capacity of their boats. This important object will be attained in a partial degree by the completion of the new locks, on the enlarged plan. The reconstruction and enlargement of these structures has been nearly perfected, and new locks on the large scale will be brought into use on the entire line of the Erie canal at the opening of navigation the coming season, with the exception of five which are located at points where the route of the canal is to be changed. These cannot be reconstructed and made available without the simultaneous construction of several miles of new channel, estimated to cost over a million of dollars. But it is proposed to lengthen the old locks at these points, by temporary structures in such manner that the entire canal may be navigated by boats having an additional length of 28 feet as compared with those now in use. It is not to be disguised, however, that the enlargement of the locks renders a corresponding enlargement of the sections more necessary than before.

The quantity of water required for passing boats is greatly increased by the enlarged size of the new locks. It is found extremely difficult, and in some cases impossible, to force the necessary supply for this purpose through the narrow channel of the old canal. Much difficulty and embarrassment were experienced from this fact, during the last season of navigation. Notwithstanding the vigorous efforts of the Commissioners and their subordinates, it was found impracticable to sustain the necessary height of water on some of the long levels, and it resulted that boats were frequently grounded and the navigators were subjected to injurious delays, vexation and expense. There is no reason to believe that this embarrassment will continue to increase from year to year, until the enlargement of the entire canal shall have been completed.

How far the descending tonnage can be increased, while the canal retains its present limited dimensions, is a question which gives rise to some diversity of opinion. All admit that we have approached very near the maximum capacity of the old canal, during the spring and autumn months. That a large increase in the amount of tonnage, adequate to the rapid growth of our trade is practicable in the present condition of our canal navigation, cannot safely be assumed.

The future policy of the State in reference to the Erie canal and its enlargement, forms one of the most important and difficult subjects which will occupy the attention of the Legislature. I must ask you to enter upon its consideration with an enlightened appreciation of the momentous interests involved in your deliberations, and with an earnest purpose to adopt a line of action worthy of the past triumphs of the State in the consummation of great designs, and in some degree commensurate with its present power and its future destiny. It is difficult to form an adequate estimate of the benefits so vast and varied as our people have derived from the original construction of a water

communication connecting the Atlantic with the western lakes. The effects of this great work upon the wealth, prosperity and advancement of the State, surpassed the most ardent anticipations of its early advocates. It has doubled the trade and population of our great commercial emporium; and if we but emulate the statesmanship of its authors by adequately increasing its facilities, it is destined to pour into our lap, during all future time, a stream of tribute rich and inexhaustible beyond any example in history, ancient or modern.

If we are not wanting in the wisdom and sagacity required to perpetuate the advantages so happily secured, no rival efforts can deprive us of our constantly growing commerce with the fertile States bordering on the great lakes and the upper Mississippi. Limiting our view to the beneficial results of the Erie canal, within our own borders, we witness the creation of flourishing towns, the growth of cities; the conversion of vast forests into fruitful fields, the abode of a happy and virtuous yeomanry; the profitable employment of enterprise and industry in every form of production; and the consequent addition of hundreds of millions in value to the property of our citizens. It seems impossible that the people should forget the source of blessings like these, or neglect the means necessary for their preservation. In less than ten years after the completion of the canal, its revenues having returned to the treasury the entire cost of its construction, it was seen that an increased capacity must soon be given to it to accommodate the internal commerce, of which it was the outlet.

It is near sixteen years since the Legislature of 1835, after mature deliberation, determined to enter upon the enlargement of the Erie canal. I do not propose to review or discuss the changing policy which has retarded the prosecution of the undertaking. Our responsibilities relate to the present condition and future welfare of the State, rather than to past events which belong to the province of the his-

torian. Since the work of enlargement was commenced we have expended upon it the sum of $15,990,443.81. Some of the great objects of this expenditure cannot be fully realized until the work is completed. In the meantime the annual loss of interest on the amount invested at six per cent is over one million of dollars, to which must be added an annual loss of at least another million in the needless cost of transportation, which would have been saved by the completion of the enlargement; and these unnecessary sacrifices must increase, from year to year, with the tardy progress of the expenditure. The amount already lost under these heads cannot be less than ten or fifteen millions. The question then arises, how much longer shall this be borne?

According to the most recent estimates of the Engineer Department, it will require eleven millions of dollars to finish the enlargement of the Erie canal, and $1,165,000 to complete the Genesee Valley and Black River canals. If we assume that the canal revenues, after paying the yearly contributions to the General Fund and the Sinking Funds required by the Constitution, will continue to yield a net surplus of $800,000 per annum, it follows that the completion of this great undertaking, so urgently demanded by every consideration of public policy, must be postponed until the year 1866. A net revenue of $1,000,000 per annum would effect the same object in 1863.

An important question is presented to the consideration of the people and their representatives, whether the consummation of the work shall be deferred for this long series of years, or whether some judicious and practical plan shall be adopted to ensure its completion at the earliest period consistent with economy of expenditure and the due preservation of the public credit.

As an original question, free from the embarrassments which have been thrown around it by the financial provisions of the Constitution, the path of interest and duty would be too plain to admit of hesitation. Under the guid-

ance of Clinton and his compeers, the Erie canal was constructed in a period of less than eight years, in the face of formidable obstacles, in defiance of a powerful opposition, and amid the doubts and embarrassments always attendant upon a bold and untried experiment. Genius and energy triumphed over every difficulty. This grand result was achieved at a time when the State was comparatively feeble in resources. Since that day our population has advanced to upwards of three millions, and the wealth of the community has been multiplied more than four-fold.

It is indeed remarkable, after an experience like ours, that any portion of our people should deem it wise or necessary to occupy a quarter of a century in enlarging and perfecting a work, which was constructed originally under circumstances far more difficult, in less than one-third of that period. It becomes necessary in our deliberations on this subject, to consider the effect and operation of the financial provisions embodied in the Constitution of 1846.

Not only are a large portion of the canal revenues specifically set apart for the payment of the existing debt, but the power of the Legislature to create new liabilities (beyond $1,000,000) is virtually annulled. These constitutional provisions are the supreme law, and must be observed with scrupulous fidelity. Although their operation may thwart or defeat objects of the highest public concern, so long as they remain in force, they are not to be evaded or disregarded.

It is important therefore to inquire whether by any and what safe means, consistent with the constitutional restrictions referred to, the early completion of the enlargement may be ensured? Three distinct modes have been suggested for the attainment of this object, each of which will doubtless receive your careful consideration. By the first it is proposed to obtain the necessary funds by an issue of certificates transferring in advance, for a sufficient series of

years, that portion of the canal revenues which is devoted by the Constitution to the enlargement of the Erie canal.[b] That it is within the competency of the Legislature to dispose of this part of the tolls, in the manner indicated, is confidently asserted by some of our ablest jurists. It is obvious, however, that an absolute sale of the revenues, at the risk of the purchaser, without recourse to the State, is the only mode by which they can be realized in anticipation, without a violation of the provision restraining the creation of a new debt.[c] A mere pledge of revenues, as a security for moneys advanced on them, would constitute a debt against the State, in a new and unusual form. An unconditional transfer of the future tolls involves practical difficulties which cannot be disregarded.

It may be doubted whether the necessary advances could be obtained on this basis, on terms satisfactory to the State. Capitalists would naturally require either the ultimate guarantee of the State that the revenues shall prove adequate, or a stipulation that the rates of toll shall not be reduced below a certain scale. The first of these conditions is incompatible with the Constitution;[d] the second is subject to serious if not conclusive objections. Important considerations of policy would dictate that the unqualified power of regulating the tolls should continue to reside in the Canal Board.

The next plan to be considered is the authorization of a loan under the 12th section of the financial article. Before a law for this purpose could take effect it must be submitted to the people for their ratification; and the Constitution requires that every such law "shall provide for the collection of a direct annual tax to pay the interest on the debt as it falls due."

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[b] Const. 1846, art. 7, § 3.
[c] Const. 1846, art. 7, § 12.
[d] Const. 1846, art. 7, § 3.

No sufficient reason, founded in equity or expediency, can be assigned for the imposition of a direct tax upon the State at large to pay interest on any portion of the cost of the enlargement, when the canal revenues are fully adequate to that object. Whilst all sections of the State are interested in the early consummation of the work, and will derive large benefits from the increased revenues which it will yield, a direct tax would operate unequally and unjustly, and would be unacceptable to the counties remote from the line of the improvement.

The third and last resort, is an amendment of the Constitution in the manner prescribed by the instrument itself.[e]

Whatever diversity of opinion may exist in regard to the wisdom of the policy which governed the convention of 1846 in this respect, I cannot doubt that a large majority of our citizens of all parties, in view of the steadily increasing revenues of the canal would now unite in conferring upon the Legislature the necessary authority to create a loan of seven or eight millions on a pledge of the surplus revenues, for the early completion of the enlargement. The proposition to be submitted for this purpose should include a provision requiring an additional contribution from the canal revenues to the Sinking Fund, sufficient for the payment of interest on the new loan, and eventual reimbursement of the principal. To give effect to the amendment under consideration, it must be agreed to by two successive Legislatures, and then approved by a majority of the people.

If the amendment should be adopted by the present and succeeding Legislature, and then sanctioned by the people, the Legislature of 1853 would be enabled to create the loan, and the final completion of the enlargement would be accomplished before the opening of navigation in 1856.

I am aware that the sentiment of our people is adverse to

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[e] Const. 1846, art. 13, § 1.

the accumulation of a large public debt, and none will deny the propriety of exercising such precautions as are needed to prevent the imposition of heavy taxes on the present or future generations. It is believed, however, that a resort to the public credit for means to expedite the enlargement of the Erie canal, is free from the objections commonly urged against an increase of the State debt. Such a loan would expose the people to no new burthens. The present revenues of the canal are sufficient to ensure the discharge of the new liability, and of our existing debt, at no distant period. It has been shown that the present money value of the canals, adopting the average revenues of the last five years, is equal to a capital of $41,967,414.50, at six per cent interest. The completion of the work for which the loan is needed will add largely to the financial resources of the treasury. There is a wide distinction to be observed between debts judiciously made in furtherance of trade and intercourse, and the gigantic debts which weigh down the people in most of the European nations. The former serve to develop latent resources and open new fountains of wealth, creating the revenues required for their extinguishment, and infusing fresh vigor into all the elements of public prosperity. Widely different is the influence of a public debt, originating in wars of ambition, in the profligacy of courts, or the vanity of princes. Expenditures of this nature yield no return, and the burthens resulting from them press with crushing force upon the toiling millions, from age to age. I entertain a firm conviction that the enlargement of the canal will produce a large increase of revenue, furnishing all the means required to pay the cost of the work, and that its income, after paying the debt, will ultimately relieve our citizens from taxation for support of government, and at the same time yield ample fund for the support of education and the prosecution of new improvements. A question like this, so eminently practical, and surely within the comprehension of a sagacious popu-

lation like ours, may safely be left to their own intelligent decision.[1]

The funds dedicated to the support of education are in a flourishing condition. The capital of the Common School Fund, on the 30th of September last, was $2,290,673.23 — being an increase from the preceding year of $47,190.87. The revenues for the last fiscal year including $165,000 from the Deposit Fund, was $300,792.10. The increase of this fund, and of its income, will justify you in increasing the amount of the distribution among the common schools from $285,000 to $300,000 per annum.

It appears from the latest returns to the Superintendent of Common Schools that there are in the State 11,397 school districts; that the whole number of children taught therein, in the year 1849, was 749,500 of all ages; and that the whole amount paid for teachers' wages during that year was $1,322,696.24, of which $767,389.20 was contributed from the State Treasury, and raised by county and town taxation.

The operations of the act of 1849, establishing free schools, have not produced all the beneficial effects, nor imparted the general satisfaction anticipated by the friends of the measure. It has been the policy of our State, from

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[1] The Legislature sought to solve the problems presented in the Governor's message, by enacting chapter 485, on the 10th of July, providing for the completion of the Erie Canal enlargement and the Genesee Valley and Black River canals. This act, among other things, authorized the comptroller to borrow $9,000,000 on canal revenue certificates, and for the redemption of the certificates, the act pledged all the canal revenues after paying the expenses of canal administration and completing the Genesee Valley and Black River canals and the Erie Canal enlargement. Under the act, the State was not bound to make up any deficiencies in canal revenues, and creditors could not resort to any other fund for the payment of the certificates. In Newell v. People (1852), 7 N. Y. 9, the court of appeals declared the act unconstitutional as repugnant to the provisions of the Constitution regulating the disposition of surplus canal revenues, and prohibiting the creation of a state debt without a vote of the People.[p] This decision led to the canal amendment of 1854. See also Rodman v. Munson (1852), 13 Barb. 188.

[p] Const. 1846, art. 7, §§ 3, 12.

an early period, to promote the cause of popular education by liberal and enlightened legislation. A munificent fund created by a series of measures, all aiming at the same great result, has been dedicated by the Constitution to the support of common schools, and the annual dividend from this source will gradually increase.[f] The duty of the State to provide such means and facilities as will extend to all its children the blessings of education, and especially to confer upon the poor and unfortunate a participation in the benefits of our common schools, is a principle which has been fully recognized and long acted upon by the Legislature and the people.

The vote of 1849, in favor of the free school law, and the more recent vote by a reduced majority against its repeal, ought doubtless to be regarded as a re-affirmation of this important principle, but not of the provisions of the bill, leaving it incumbent upon the Legislature, in the exercise of a sound discretion, to make such enactments as will accomplish the general design, without injustice to any of our citizens. An essential change was made by the law under consideration, in imposing the entire burthen of the schools upon property, in the form of a tax, without reference to the direct benefits derived by the taxpayer. The provisions of the act for carrying this plan into effect, have produced oppressive inequalities and loud complaints.

In some districts the discontent and strife attendant upon these evils, have disturbed the harmony of society. An earnest effort should be made to reconcile differences of opinion, to remedy the grievances arising from the imperfect operation of the law, and to equalize the weight of taxation by such principles of justice and equity as will ensure popular sanction. The success of our schools must depend, in a great degree, upon the united counsels and friendly co-operation of the people in each small commu-

[f] Const. 1846, art. 9, § 1.

nity composing a district, and nothing can be more injurious to the system of common school education than feuds and contentions among those who are responsible for its healthful action and preservation.

It cannot be doubted that all property, estates, whether large or small, will derive important advantages from the universal education of the people. A well considered system which shall ensure to the children of all, the blessings of moral and intellectual culture, will plant foundations, broad and deep, for public and private virtue; and its effects will be seen in the diminution of vice and crime, the more general practice of industry, sobriety and integrity, conservative and enlightened legislation and universal obedience to the laws. In such a community the rights of property are stable, and the contributions imposed upon it for the support of government are essentially lightened. But I entertain a firm conviction that the present law requires a thorough revision, and that an entire change in the mode of assessment is indispensable.[2]

The capital of the Literature Fund on the 30th of September last was $272,880.12; the income during the fiscal year was $39,112.40.

The capital of the United States Deposit Fund being $4,014,520.71, is in a highly productive state, having yielded an income, the last fiscal year, of $260,228.04. The revenues of this fund, during the present fiscal year, will, doubtless, be sufficient to justify the usual appropriations in support of colleges.

These were omitted by the last Legislature in consequence of appropriations in previous years, exceeding the current incomes on which they were charged. It is worthy

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2 The free school law of 1849, was declared unconstitutional in Barto v. Himrod (1853), 8 N. Y. 483. Before this decision, however, the act of 1849 was repealed by the act of 1851, chapter 151, passed April 12, "to establish free schools throughout the State." The new act re-established the rate bill which had been abrogated by the act of 1849.

of your consideration whether the new collegiate institutions established within the last two years are not entitled to an equitable participation in the public bounty. The higher institutions of learning form an essential part of our system of education, and they present strong claims to patronage and encouragement. The true design and legitimate effect of every endowment conferred upon colleges is to cheapen the charges for tuition, and thus enable many who have not been favored by the advantages of fortune, to attain the honors of scholarship.[3]

The allowance of $250 to each of the county academies, authorized by the act of 1849, for the education of common school teachers, has produced beneficial results, and I would recommend a renewal of the appropriation.

The Normal School has been administered with ability and success, contributing largely to the progress of popular education. It is of the highest importance that this institution should continue to receive an ample support.

My immediate predecessor, in each of his annual messages, recommended to the Legislature the creation of an institution for the advancement of agricultural science and of knowledge in the Mechanic Arts. There can be no object more worthy of public favor than the encouragement of agriculture and the intellectual improvement of the husbandman. The cultivation of the soil, the primitive pursuit of man in a state of civilized society, and the foundation of all public prosperity, presents the highest claim to the fostering care of government. As the agricultural is

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[3] Chapter 536, passed July 11, appropriated $40,000 for academies, $12,000 from the Literature Fund and $28,000 from the income of the United States Deposit Fund. The same act made an appropriation for Delaware Academy from the income of a special fund created for the benefit of that academy by an act passed in 1819. The same act appropriated to the Albany Normal School $10,000 from the income of the United States Deposit Fund. The act also appropriated other portions of the Literature Fund for the purchase of text books and apparatus for academies and for the instruction of teachers.

Chapter 291, passed June 25, also made appropriations for various academies for the year 1850.

more numerous than all other classes combined, all other interests depend upon its healthful progress and condition.

In connection with the subject under consideration, I would respectfully invite your attention to an able report made to the last Legislature by the commissioners appointed to mature and report a plan for an agricultural college and experimental farm. It cannot be doubted that an institution of the character proposed would promote the dissemination of agricultural knowledge and elevate the condition of the people. In its formation I would recommend an additional department for instruction in the mechanic arts. Identified in interest, each imparting strength and vigor to the other, the agricultural and mechanical classes combined may be said to constitute the substantial power and greatness of the commonwealth. The free spirit of our institutions and the incentives to effort in which this country abounds, are peculiarly favorable to the development of inventive genius and rapid advances in the useful arts. Our unparalleled progress may be attributed in no small degree to the successful skill of our artizans in originating and perfecting the varied improvements which increase the productiveness of labor in most branches of human industry. Yet from the nature of their pursuits and the necessity which subjects them to a life of toil, too many of our youthful mechanics are deprived of those means of intellectual improvement which the State has provided for other professions. The beneficial effects of an agricultural and mechanical school will not be limited to the individuals who may participate directly in its privileges. The students graduating from such an institution, elevated in character by moral and intellectual training, and endued with that knowledge of the natural laws and practical sciences which unites manual labor with the highest exercise of the reasoning faculties, will become teachers in their turn, imparting to those around them the light of their own intelligence, and conferring dignity upon the common pursuits of industry by an example of honorable

usefulness, in their varied occupations. The elevation of the laboring classes is an object worthy of the highest ambition of the statesman and the patriot. Under our republican system of government the political power of the State must always reside among the men of industry and toil, whose virtuous energy is their best patrimony. The intelligence which qualifies them for the duties of self-government, affords the only sure guarantee for the perpetuity of our free institutions.[4]

The condition of the charitable establishments sustained in whole or in part by the bounty of the State, will be exhibited by the annual reports of the several institutions. The Asylum for the Instruction of the Deaf and Dumb, and the Institution for the Blind, continue to be a source of inestimable blessings to the unfortunate beings who, in the dispensations of our common Father, have been deprived of the best faculties of man. The New York Hospital is in a highly satisfactory condition, and its enlightened management has contributed largely to the relief of human suffering. I consider these institutions worthy of the fostering patronage of the Legislature. The administration of the State Lunatic Asylum at Utica, is eminently successful. On the 30th of November, the number of inmates was 429; the number admitted during the year was 367; the number discharged was 336, and of deaths 51. Of the patients discharged from the institution, 171 were fully restored to reason, and 49 were improved but not entirely recovered. Dr. Benedict, the present superintendent, has afforded high evidence of his capacity to carry forward the work of benevolence and humanity so nobly begun by the lamented Brigham.[5]

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[4] See 1850, Assembly Document No. 30, for the report of the agricultural college commission.

[5] By chapter 446, passed July 9, indigent lunatics might in the discretion of the county judge, be sent either to the county poor house or to the State Lunatic Asylum.

I deem it my duty to renew the recommendation made by my predecessor to the last Legislature, of the establishment of an institution for the instruction and improvement of idiots. This unfortunate class of beings, whose deplorable condition excites the sympathy of every heart, have been too long overlooked in our legislation for the relief of the helpless. Until within a recent period, it was the general belief that the idiot, apparently bereft of intellect, is not susceptible of moral or mental improvement. But experience has demonstrated that he retains some latent germs of intelligence which may be developed by patient culture, and that he may be subjected to healthful discipline, employed in useful labor, and raised to a condition of comparative comfort. Great success has attended the institutions established for the instruction of this class of sufferers in France, Germany and England. A similar school, recently formed in Massachusetts, has been attended with the most satisfactory results. I commend these facts to your attention, convinced that considerations of policy and humanity should prompt you to rear an institution which will complete our system of public charities, and exalt still higher the character of the State for beneficence and philanthropy.[6]

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[6] Chapter 502, passed July 10, established an asylum for idiots. According to the first report of the trustees of the asylum, which was submitted to the Legislature of 1852 (see Sen. Doc. No. 30), a building owned by Stephen Van Rensselaer on the Troy road, about two miles from Albany, was leased for two years for asylum purposes, and the asylum was opened in October, 1851.

In 1853, by chapter 159, the sum of $20,000 was appropriated for the purchase of land and the erection of buildings for the use of the asylum. A site was selected on the Troy road near the Van Rensselaer property, consisting in part of land owned by Stephen Clarke and in part of land in his possession and which was leased by him to the State. The trustees immediately began the erection of an asylum building. (See report of Trustees, 1854, Assem. Doc. No. 54.) By an act passed in 1854, chapter 290, the asylum trustees were authorized to sell the property already acquired, and change the location of the asylum. A new site was accordingly acquired in 1854, near the city of Syracuse. Buildings were erected thereon, and the

The condition of the State Prisons will be fully presented in the annual report of the inspectors. The Sing Sing and Clinton Prisons continue to be a heavy charge on the treasury, though it is but just to remark that much of the large expenditure at the former establishment, during the past year, was occasioned by the erection of permanent buildings. It is gratifying to observe that in all our penitentiaries an admirable system of discipline prevails, conducive to the physical comfort and moral welfare of their inmates.

I would respectfully call your attention to the importance of enlarging the House of Refuge for the Reformation of Juvenile Delinquents in the city of New York. The number of delinquents is constantly increasing, while the accommodations of the institution have not been materially extended since its foundation. The managers have found it necessary to notify the Sheriffs of counties that no more delinquents can be received, until further notice; and a large number of youthful convicts are consequently committed to the prisons. The crowded state of the establishment baffles the efforts of the managers to classify offenders; and the erring youth, whose wanderings may be traced to early destitution or abandonment, is brought into intimate association with the hardened criminal. Thus the humane design of the institution, the reformation of juvenile offenders, is in a great degree defeated. These evils require a prompt and adequate remedy. The Western House of Refuge has been brought into use under circumstances which give assurance of satisfactory results. The admirable structure and arrangement of the establishment, and its successful administration thus far, reflect credit upon

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asylum was moved in 1855. (See report of Trustees, 1856, Assembly Document No. 99.) In 1891, by chapter 51, the name of the institution was changed to the "Syracuse State Institution for Feeble Minded Children." For interesting historical sketches of the movement for the instruction of idiots, see Sen. Doc. No. 23, 1846, and Sen. Doc. No. 44, 1847.

the trustees who have been prompted to give their time and efforts to this noble undertaking by a spirit of enlightened and disinterested philanthropy. I refer you to the report of the trustees for the progress and present condition of the institution, and respectfully recommend such further appropriation as may be necessary to complete the new erections commenced last year.[7]

The present condition of our militia establishment, and of the military property belonging to the State, will be exhibited in the annual reports of the Adjutant General and the Commissary General. To preserve the efficiency of the militia system by laws calculated to excite and cherish a military spirit in the ranks of our citizen soldier, always the main strength and reliance of the country in time of war, is an object eminently deserving the attention of the Legislature.[8]

The law of 1849, in relation to emigrant passengers, providing for the relief of the sick and destitute among them by a tax, intended to protect the community from unjust and oppressive burdens, has been efficiently administered and continues to produce favorable results. It is to be regretted that existing legal provisions have not, in all cases, furnished adequate protection against the practice of frauds on those unfortunate emigrants, destitute of friends, and ignorant of our laws, who are constantly landing on our shores, and if practicable, further legal protection ought to be provided.[9]

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7 Chapter 254, passed June 20, appropriated $50,000 for the Society for the Reformation of Juvenile Delinquents in New York, to be used in the erection of new buildings sufficient to accommodate at least 1000 inmates. The expense of inclosing the grounds was also to be paid from the same appropriation.

8 Chapter 180, passed April 16, provided for the enrolment of the militia, abolished militia fines in certain cases, and exempted members of uniform companies from working on highways and serving on juries. The act was sustained in People ex rel. Scott v. Chenango (1853), 8 N. Y. 317.

9 Chapter 523, passed July 11, amended the emigrants' passenger acts by including additional provisions for the protection of emigrants.

The last Legislature, acting in pursuance of the humane suggestions of my predecessor, passed a law designed to secure to each family which possesses a freehold estate, a home of limited value, in case of the embarrassment or bankruptcy of its head. It is represented that the clause requiring a special registry of each homestead intended to be held subject to this exemption, renders the law practically inoperative from the aversion felt by most men in good credit to advertising an apprehension of insolvency. I would respectfully submit to your consideration whether the benevolent principles of the law should be made to depend upon a condition with which most men will omit to comply. In other words, ought not the rule and the exception to be reversed?

I would also suggest that the exemption afforded by this law ought not to include debts contracted previous to the purchase of the estate by the debtor. Justice, no less than sound policy, dictates that neither temptation nor opportunity should be given for the practice of fraud upon confiding creditors.

I would respectfully recommend that an adequate appropriation be made for a more complete exploration of the lands belonging to the State, in the northern counties, with a view to plank roads and other facilities of access. It is believed that by improving the means of communication, some large tracts might be brought into market and sold for actual cultivation. The settlement and improvement of these remote forests is a matter of much public importance, and should be encouraged by a liberal policy. The land should be divided into convenient farms, and offered to actual settlers for small prices, intended only to indemnify the treasury for actual expenditures. However desirable it may be deemed, under monarchical governments, to have the national domain held by a few, it is important in a republic, that it should be divided, as far as practicable, among the many. Resolutions were adopted

by the last Legislature, with signal unanimity, in favor of opening the public lands of the Union, without price, to landless settlers. Those resolutions, in their general scope and purpose, have my hearty concurrence. Some of the evils resulting from large landed accumulations, and especially from extensive leasehold estates, have been fully realized in this State. Our new constitution has wisely abolished feudal tenures, and prohibited the future creation of perpetual leases.[g] Contracts of this nature, made at an anterior period, in harmony with laws then existing, have been and must be respected in all our legislation. It can hardly be doubted that the occupation of the large manors in this section of the State, under the system of perpetual leases adopted in the early settlement of the country, has been highly detrimental to the interests of both proprietors and tenants, for some years past. Non-payment of rent, litigation, resistance of law, irregular combinations and popular discontent, in its most repulsive form, have checked our progress and disfigured our public history. I consider it of much importance that these evils should be remedied by just and liberal arrangements, which shall respect the rights and promote the true welfare of both parties. The perpetuation of leasehold estates, embracing a large agricultural population, is repugnant to our national policy and to the liberal spirit of our institutions. It is a kind of tenure which has become odious to tenants, exceedingly inconvenient and expensive to landlords, and every way adverse to the interests of both.

The manly independence which belongs to the character of an American citizen, demands the absolute control and ownership in fee of the soil, improved and cultivated by his labor, and on which he is to spend his life and rear his children. Experience has shown that leasehold estates are peculiarly unfavorable to the development of the country

[g] Const. 1846, art. 1, §§ 12, 14.

and the progress of the people in improvement and enterprise.

It is to be hoped that such liberal terms of sale will be offered by landlords, and accepted by tenants, as shall soon put an end to a tenure which ought no longer to be desired by either. It is worthy of your consideration whether this desirable result may not be promoted by the friendly mediation of the State, on principles having the free assent and voluntary concurrence of both proprietors and occupants. A purchase of the manorial titles by the State, and a resale to the tenants on equitable terms, would be preferable to the present state of things. All remedies inconsistent with those rights of property and the obligation of contracts which are secured by law, and which government is bound to enforce, must be delusive and impracticable. The sanctity of private rights and the supremacy of the law must be maintained under all circumstances. Consistently with these principles, which I hold to be paramount and inviolable, I believe it is practicable to terminate the evils complained of, provided the parties to be affected will adopt a rational view of their own interests, and co-operate in an equitable and enlightened system of adjustment.

The condition of our statute laws will require your most serious consideration. At present great uncertainty exists and great difficulty frequently arises in ascertaining what is the law upon many questions relating to the rights and interests of our citizens, and to the duties and powers of public officers. This difficulty is most severely felt in the interpretation of the statutes relating to the administration of justice. The Revised Statutes are partially in operation; the judiciary acts of 1847 and 1848, with the subsequent amendments to them, are also in operation to some extent, and the Code of Practice, effects changes not only in remedies but in rights, sometimes abrogating previous amendments wholly, sometimes modifying them, and often introducing provisions which limit or qualify their opera-

tion. That code was not a complete system in itself, but assumed the existence of extensive legal principles and of a knowledge of the practice and pleadings prevalent when it was adopted. It was a series of amendments to the existing law, operating in form upon remedies, but in reality often upon rights, so far as they were affected by the remedy. It was, therefore, circumscribed and partial in that class of cases. The commissioners doubtless considered it beyond the limits of their authority to make general and comprehensive provisions, in respect to the rights thus affected.

The vast and alarming increase of litigation which seems to overwhelm some of the courts, and threatens to obstruct the administration of justice, particularly in the court of last resort, has doubtless arisen in some degree from this uncertainty. My acquaintance with the practical operations of the new provisions referred to, does not qualify me to pronounce upon their merits, nor do I feel competent to judge how far the complete code of practice reported by the commissioners, is calculated to remedy the evils under consideration. But it is evident that our system of laws cannot be complete until an entire harmony is produced between the principles introduced by the code of practice and our general statutes. They must in some way be adapted to each other. This was probably intended to be effected by that provision of the Constitution which required the appointment of commissioners to reduce all the laws of the State to a system. The considerations I have already suggested render this a duty of pressing importance. The prompt organization of such a board would relieve the Legislature from applications for partial and imperfect amendments, and if we should not obtain a complete body of the whole law, such as was contemplated by some at the adoption of the Constitution, we may at least hope for a revision and condensation of our statutes. The last Legislature adjourned without acting on the final report

of the Commissioners on Practice and Pleading. It will be your duty to take such action as will ensure a deliberate examination and thorough analysis of this new code of civil procedure, with a view to its adoption, in such form as may receive your sanction, at the earliest practicable period.[10]

I am of opinion that the multiplication of suits in the supreme court, which produces serious delays in the course of justice, would be essentially diminished by restoring to the county courts a more extended civil jurisdiction. As the county judge is required to hold courts of general sessions for criminal business, at which juries are necessarily in attendance, the public convenience would be greatly promoted by conferring jurisdiction in ordinary civil cases. Serious doubts have existed concerning the constitutional power of the Legislature in this respect. It appears to me that the decision of the supreme court, in two districts, after full deliberation, sustaining the constitutionality of the act of 1847, conferring civil jurisdiction on the county courts in special cases, should be deemed sufficient to put the question at rest.[11]

I deem it my duty to call your attention to an important defect in the statutory provision for the punishment of embezzlement as a crime. The operation of the law is confined to the officers, agents, clerks, or servants of private persons and of incorporated companies. It is manifestly proper, if not necessary, that this provision should be extended to include all public officers who may be charged

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[10] Chapter 479, passed July 10, contained a large number of amendments to the Code of Procedure as re-enacted in 1849.

[11] The Court of Appeals did not concur in this view, but in Free v. Ford (1852), 6 N. Y. 176 and Kundolf v. Thalheimer (1855), 12 N. Y. 593, held that the county court was not, like the old court of common pleas, a court of general jurisdiction but a new court with a limited statutory jurisdiction, and that the legislature could not confer original jurisdiction on the county court in common law actions. The jurisdiction of the county court was further enlarged by the judiciary article of 1869, and by the constitution of 1894.

with the collection or custody of moneys, whether belonging to the public or to individuals.[12]

I concur in the views submitted to the Legislature in the last message of my predecessor, in favor of the erection of a new and convenient building for the State Library. The present accommodations are altogether inadequate, and the difficulty is increasing with the extension of the library from year to year.[13]

The alarming increase of bribery in our popular elections demands your serious attention. The preservation of our liberties depends on the purity of the elective franchise, and its independent exercise by the citizen; and I trust you will adopt such measures as shall effectually protect the ballot box from all corrupting influences.

Our circulating medium is believed to be in a sound condition. The report from the Bank Department exhibits a large increase of banking capital, under the general law, during the last year. The gradual reduction of our State debt, makes it necessary that some other form of security should be accepted as a basis for circulation. I would respectfully recommend the admission under proper restrictions, of the stocks created by the incorporated cities of this State. In this connection I must invite your attention to the provision of the Constitution making it the duty of the Legislature to restrict the powers of cities in respect to taxation, assessment, borrowing money, contracting debts and loaning their credit. The performance of this duty ought not to be longer deferred.

The growing importance of the Bank Department, the vast extent of its operations and the peculiar responsibility

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[12] Chapter 144, passed April 11, extended the provisions of the Revised Statutes, articles four, title three, section 53, relative to the offence of obtaining money under false pretences, so as to include every person fraudulently obtaining the signature to a written instrument, or money or property for alleged charitable purposes.

[13] A new library building was provided for by chapter 226, passed June 19. See 1850, note 17, *ante*, p. 487.

attending them, render it important in my judgment that this Department should be detached from the office of the Comptroller, already overburthened with duties, and erected into a distinct office, to be placed under the charge and direction of a competent commissioner.[14]

The oppressive and unequal operation of the laws regulating the assessment of property, is a subject of general and just complaint. A large share of the personal property escapes assessment altogether, while in many portions of the State, real estate is estimated by the assessors at less than half its actual value. To the extent that a portion of the taxable property of the State escapes assessment, the burthen of taxation is unjustly increased on the remainder. These evils demand an effective remedy. A careful revision of the existing laws has become indispensable, and I trust the subject will engage your early and earnest attention.[15]

In compliance with section five of article four of the Constitution, I communicate herewith a statement of reprieves, commutations, and pardons, granted during the past year, by my predecessor.

Your attention is requested to the difficulties which have recently arisen between our citizens residing in Richmond county, and the inhabitants of New Jersey, in reference to the oyster fisheries in New York and Newark Bays.[16]

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[14] The bank department was established by chapter 164, passed April 12. The act created the office of superintendent of the banking department, who was to be appointed by the Governor and Senate, for a term of three years. All the powers, duties and functions of the comptroller in relation to banks were transferred to the superintendent, who was to have general supervision of these institutions.

[15] Chapter 176, passed April 15, contained numerous provisions intended to secure a more accurate and equitable assessment of property.

[16] A concurrent resolution was adopted directing the attorney general "carefully to inquire and ascertain whether the rights of fishery claimed by citizens of this State, in Newark and New York bays, within the territorial limits of the state of New Jersey, can be established according to law, and to report to the legislature whether in his opinion, such rights can

Since the adjournment of our last Legislature, the grave questions respecting the organization of the newly acquired territories of the Union, which had for some years involved the country in agitation and strife, have been definitely acted on by Congress. California has been welcomed as the thirty-first of the States composing the Federal Union; the disputed boundary of Texas has been settled; while New Mexico and Utah have been organized by acts which in effect leave the Mexican law prohibiting slavery in force, and refer the question of its admission or exclusion to the ultimate decision of the people concerned. It is generally believed that the public sentiment in these newly organized communities, co-operating with other causes, will prevent the introduction of slavery, from which the country was exempt when it was conquered by our arms.

Notwithstanding the violent discussions which have agitated the country, and the wide diversity of opinion which existed in respect to the questions involved in the recent action of Congress, a general disposition is evinced to acquiesce in the measures referred to, and to regard them as a final settlement of these territorial controversies. The people of this State continue to indulge a strong desire that harmony and mutual good-will may prevail between all portions of our widely extended republic. They are a law-abiding people; they cherish the most friendly sentiments towards their brethren of the South; and have always conceded to the slave states the entire right to maintain and regulate slavery within their own limits, and to exercise all those rights without abridgment or hindrance which the Constitution confers. More than this ought not to be claimed or expected.

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be established and maintained on the part of the citizens of the state of New York; and if in his opinion such rights can be established, that he take such measures either by suits at law, or by any other proceedings as will test the validity of this claim, on the part of the citizens of the state of New York.

It is a source of profound surprise and regret, that any portion of the people of the southern States should find, in the terms of settlement finally agreed upon by Congress, an occasion for the continuance of sectional jealousy, or a supposed necessity for nurturing the spirit of disunion. In the admission of California and the organization of governments for the territories, Congress adopted the principle, originally contended for by many leading statesmen of the South, of leaving the matter to the uncontrolled action of the people themselves. I cannot but persuade myself that the feelings of alienation exhibited by some of our fellow citizens in the southern States, must proceed from an unhappy misconception of the views and sentiments entertained by the northern people. Great injustice is done in assuming that we have intended or now meditate encroachments upon the just rights of any portion of the confederacy. During the entire period of our national history, the people of New York have manifested a spirit of kindly deference to the feelings and prejudices of our sister States, and a readiness to sacrifice everything but principle and honor for the sake of union and concord. Their course has been distinguished by a broad spirit of nationality, elevated far above the indulgence of local views or sectional partialities.

The limits of this communication will not permit me to recall all the evidences in which our history abounds of the generous spirit of concession which New York has uniformly manifested, as a prominent member of the Federal union. For more than three-fourths of the period which has elapsed since the adoption of the Constitution, southern statesmen, elevated by the aid of her voice, have filled the Presidential office. Every peaceful extension of our southern territorial limits was made with her concurrence, until by successive steps all the slave territory on the North American Continent was brought within the boundaries of the United States. Although every new acquisi-

tion diminished the relative weight of New York in the National Councils, she waived all views of State power or aggrandizement, and yielded for the considerations urged by other sections in favor of annexing the contiguous countries.

Nor is this all. Far from invading any of the constitutional rights of the southern States, our people and their representatives have always respected those rights, and abided cheerfully by all the conditions of the federal compact. It should not have been regarded as an encroachment upon the rights of any State, that we objected to the extension of slavery over a country acquired by our common efforts, and which had been made free by the action of its own legitimate authorities. No wrong was inflicted upon any State by the effort to give to the people of the conquered territories a government best adapted to their sentiments and their future happiness. By the ordinance of 1787, a large portion of the American people had declared their conviction that slavery ought not to be extended over free territory; but the exclusion of that institution from the States of the northwest was not then deemed sufficient to prevent the formation of the Federal Union. The same sentiment still exists in the northern mind, to be manifested whenever and only when its exercise is provoked by new aggressions; and I cannot concede that it affords any ground of complaint on the part of any of the States, still less that it can justify secession, revolution, or any effort to overthrow the free Constitution established by our fathers.

I have thus adverted to the course of this State in its national relations, from no desire to revive past discussions; but from a conviction that it is due to our people to vindicate them from imputations of sectional prejudice, indifference to Constitutional obligations, or hostility to the rights of other portions of the republic. If there is danger to the Union from any quarter I rejoice to say that

it will not be found within our borders. Men of extreme opinions may be found in every community; but the great body of the people of New York are aware that the Constitution of the United States was framed and adopted in the spirit of compromise, and that it must be faithfully maintained in the same spirit. They are attached to the Union; they cherish an ardent devotion to it; and desire to see it preserved by manifestations of mutual deference and regard between the states composing it.

Although New York might maintain a respectable attitude before the world, and would not fail to preserve her liberties as an independent State, she would regard a dissolution of the Union from any cause as the greatest calamity which could befall mankind. Whenever the American Union is destroyed the cause of constitutional government will be perilled by the shock, and the friends of liberty everywhere will mourn over the fall of a mighty fabric which now animates the hopes and commands the admiration of the world. Every patriot must desire that all causes of irritation or disagreement between the different parts of our common country may speedily disappear. It should be the aim of all to allay sectional animosities, and to restore those kindly sentiments which united our ancestors in noble efforts and common trials. The questions resulting from our recent conquests having been disposed of by the action of Congress, there can be no sufficient cause for jealousies and dissensions between the North and the South. The most serious of our past differences were produced by territorial acquisitions, and they strikingly admonish us that it is indispensable to our future peace and happiness that bounds should be set to the spirit of conquest; and that the energies of the general government should be directed to those great and beneficent objects in which all sections have a common interest and for which the Constitution was intended.

The provision of the federal compact requiring the return of "fugitives from labor," however repugnant to the sentiments of many of our people, is of paramount authority, and like every other constitutional obligation should be observed in good faith.[b] In legislating upon a subject of such difficulty, it was obvious that more than usual care was necessary that in enforcing the claims of one section of the country we should not trespass upon the rights of the other. While the claim of the southern slaveholder to recapture his slave is fully admitted, the right of the northern freeman to prove and defend his freedom is equally sacred. Both are alike under the protecting care of our common constitution.

It cannot be denied that the recent act of Congress for giving fuller effect to the provision requiring the return of fugitive slaves has excited dissatisfaction in many portions of the country, carrying them almost to the extreme of threatening resistance to the law. But all good citizens will recollect that whatever may be their individual feelings or opinions in regard to the policy or propriety of any legislative enactment, it is their plain duty, so long as it remains in force, to sustain the authorities legitimately charged with its execution. Apprehensions have been entertained that under the hastily considered provisions of the act, passed during the period of unusual agitation, persons of color claiming to be free, and really free, are not allowed those reasonable opportunities and those customary legal safeguards necessary to enable them to establish by adequate proof the fact of their freedom. A recent case has shown this belief to be not merely speculative, and that the danger that a freeman under the summary mode in which that law can be executed, may be hurried into captivity, is not wholly imaginary. We cannot and we do not believe that the south, any more than the north, aims

[b] U. S. Const. art. 4, § 2, clause 3.

at or desires such a result — or will insist on retaining provisions leading to such exciting consequences.

We shall rely not only on their sense of propriety and reciprocal justice, but their calm conviction that the law itself, to be permanent, must be reasonable, for their uniting, after due reflection, with their brethren of the North in a kind and dispassionate spirit, in reviewing such clauses as may be found defective or objectionable, and in consenting to such judicious modifications as may command general approval. In the meantime, our people must be left free to examine its provisions and practical operation. Their vital and fundamental right to discuss the merits of this or any other law passed by their representatives, constitutes the very basis of our republican system, and can never be surrendered. Any attempt to restrain it would prove far more dangerous than its freest exercise. But in all such discussions we should divest ourselves of sectional or partisan prejudice, and exercise a spirit of comprehensive patriotism, respecting alike the rights of every portion of our common country.

Before dismissing the subject of our federal relations, I deem it my duty to advert to the serious evils which some of our most important interests have suffered from the failure of Congress to extend that protection to domestic industry which experience has shown to be necessary to sustain certain branches of manufactures against foreign competition. We see the effects of the tariff of 1846, in the suspension of many establishments, not only in our own, but our sister States, involving large investments of capital, depressing not only the labors of the manufacturer and mechanic, but impairing the market they had created for the products of our agriculture. It is reasonable to hope that this state of things, so injurious and unnecessary, may be remedied in some degree at least, by judicious and timely action in Congress.

The interests of this State, in common with other sections of this country, have also suffered much detriment from the neglect of the General Government to make appropriations for the improvement of lake harbors and the removal of obstructions in the Hudson River. For more than twelve years, the great power conferred on Congress by the Constitution to aid and protect navigation on our national channels of commerce, has virtually been held in abeyance, dormant and unexercised. This dereliction of duty has caused great embarrassment to all the interests connected with our internal trade. It has compelled the State to incur a heavy expenditure which should be borne by the federal treasury. The canal authorities are now engaged in the construction of an expensive pier at the harbor of Buffalo, for the safety and accommodation of the lake shipping entering at that port. The expense of this work is estimated at over $200,000. An account of this expenditure will be kept under the directions of the Canal Board, and at a proper juncture, the amount expended ought, and doubtless will be refunded to the State by the general government. Every consideration of interest and duty demands that the powers belonging to Congress for the regulation and protection of commerce, should be steadily and vigorously exercised by such constitutional action as may best advance the national welfare and fulfil one of the leading purposes of the federal compact. It is a subject of sincere congratulation, that under our beneficent system of government which commits to the people the choice of their rulers the federal administration has been entrusted to statesmen of large experience, expansive patriotism and sound national principles, and that we may look to them with confidence to give full effect to all measures which may be adopted by the representatives of the states and the people, calculated to protect the interests and promote the prosperity of the Union.

Since the adjournment of the last Legislature, the country has been called upon to mourn the loss of a beloved and venerated Chief Magistrate. Zachary Taylor, the hero without fear, and the patriot without reproach, whose exploits had won the admiration, while his virtues gained the affections of his countrymen, was summoned to his fathers. He went down to the grave crowned with honors, and lamented by a grateful people, to whose glory and welfare his life had been devoted. By this afflictive dispensation of Providence, the duties of the Chief Executive office were devolved upon an eminent citizen of our own State, in whose patriotism the people have long reposed the highest confidence.*

It affords me pleasure to state that arrangements are in progress for sending forward numerous specimens of American skill and workmanship to be displayed at the exhibition of the works of industry of all nations, to be holden in London in May next. Many of the manufacturers and artisans of this State, prompted by a spirit of liberality and national pride, in the highest degree creditable to their patriotism, have determined to furnish a variety of articles intended to present a favorable view of the progress of the useful and ornamental arts in this country. In an enterprise so honorable to the age, and so well calculated to promote the interests of peace and civilization throughout the world, the State should not fail to evince an interest by extending every reasonable facility and encouragement; and I would respectfully recommend that provision be made for the appointment of an agent to attend the exhibition and take charge of the various fabrics and productions which may be forwarded by our citizens.[17]

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* Millard Fillmore, Vice-President, succeeded President Taylor who died July 9, 1850.

[17] Chapter 89, passed April 5, authorized the Governor to appoint an agent to represent the State at the World's Fair to be held in London in May, 1851. He was given the superintendency of New York exhibits at the fair. The act appropriated $1500 for the agent's expenses.

In entering upon the discharge of the high trust committed to me by the people, it is due to the occasion no less than to my own feelings, to express my grateful sense of the public confidence, and to assure you that, with a sincere distrust of my ability, it will be my constant aim to perform my duty with firmness and independence, and with an earnest desire to co-operate with you in all measures calculated to improve the condition, exalt the fame, or promote the happiness of our favored commonwealth.

WASHINGTON HUNT.

Albany, January 7, 1851.

SPECIAL MESSAGES.

January 10. To the Assembly: Transmitting the annual reports of the Commissary General and Adjutant General.

February 10. To the Assembly: Transmitting certain resolutions of the legislative council of Canada, expressing their satisfaction regarding the contributions made by this State to aid in the reestablishment of the parliamentary library.

This contribution was made pursuant to a concurrent resolution adopted by the Legislature in January, 1850, directing the Secretary of State and the Regents of the University to furnish "the Provincial Parliament of Canada, a copy of the laws, journals and documents of the State of New York, including the Natural History, and any other volumes which can be spared from his department, as a contribution from the State of New York towards the replacement of the library of the Canadian Parliament, which was destroyed by fire on the 25th of April, 1849."

February 21. To the Assembly: Transmitting a communication from the Secretary of the Navy, requesting a cession of jurisdiction over land in Brooklyn intended for use in connection with the navy yard, and recommending

favorable action thereon. [See 1849, special massage of March 17, and 1850, special message of March 26, *ante*, pp. 465, 512. This cession was made in 1853.]

March 26. To the Senate:

"EXECUTIVE DEPARTMENT,
ALBANY, *March* 26, 1851.

"In compliance with a resolution of the Senate, passed on the 21st inst., I communicate herewith a copy of the remonstrance of R. Jones, and 630 other inhabitants of Lower Canada, against interrupting the navigation of the waters connecting Missisquoi bay, on Lake Champlain, with the River Richelieu, which was made to the State Department of the United States, through the charge d'affaires of her Britannic majesty, on the 23d of March, 1848, with a copy of a letter from the Secretary of State, communicating said remonstrance to the Executive of this State.

WASHINGTON HUNT."

The journal does not contain the communications referred to in the message.

April 5. To the Assembly:

Veto of a bill entitled "An act to incorporate the Monticello Academy."

"After mature reflection, I am unable to avoid the conclusion that the passage of this bill would be repugnant to the principles established by the first section of article eight, of the constitution, which prescribes that 'corporations may be formed under general laws, but shall not be created by special act except for municipal purposes, and in cases where in the judgment of the Legislature the objects of the corporation cannot be attained under general laws.'

The design and meaning of this constitutional provision cannot be misunderstood. It was intended not only to re-

lieve the Legislature from the numerous applications for special charters, which experience had shown to be unfavorable to the progress of necessary legislation on subjects of general concern, but also to ensure a liberal and uniform policy, which should place all our citizens on a footing of equality in regard to the exercise of corporate privileges. Among the important improvements introduced by our present constitution, perhaps none were more salutary than the reform by which several subjects of local legislation were transferred to the supervisors of counties,[1] and the franchises formerly conferred by special grant were made free to all who chose to comply with such general regulations as the Legislature may deem necessary to the public safety. It was foreseen that peculiar instances might occur in which objects of conceded utility could be attained only through the instrumentality of a charter, but the obligation of the Legislature, to provide as far as practicable for the formation of corporations under general laws, framed upon those principles of equality which pervade our constitution seems to be clear and indisputable. In determining upon the propriety of the bill under contemplation it becomes necessary to consider whether the objects proposed by it may not be attained either under our existing statutes, or by the enactment of general provisions proper and suitable to accomplish the ends in view. Previous to the adoption of the constitution of 1846, the Legislature had established a general system for the incorporation of academies. By the Revised Statutes, (article three, title one, chapter fifteen, part one,) the founders and benefactors of any academy are enabled to become incorporated on making application to the Regents of the University, and complying with such regulations as may be prescribed by that board. The Regents have established judicious rules and convenient forms of proceeding, calculated to give full

[1] Const. 1846, art. 3, § 17.

effect to the liberal provisions here referred to; under this system the most of our academical institutions have been formed, and the requirements of the Regents have imparted strength, stability and uniformity to our higher seminaries of learning. The act under consideration requires that the corporation created by it shall possess the same amount of capital and shall comply with the rules and regulations prescribed by the Regents of the University, in reference to the management of academies, and shall subject itself to their visitations. A compliance with these provisions of the bill is all that is necessary to enable the proposed academy to acquire corporate powers from the operation of the general law already in force. I am unable therefore to perceive any sufficient necessity for conferring these powers by a special charter.

It is apparent that the objects of the act may be attained without difficulty or inconvenience under the general law regulating this subject. If it is deemed desirable that full corporate powers should be vested in and exercised by the founders of academies immediately on perfecting their preliminary organization, I would respectfully suggest that this end should be secured by further legislation, adopting general provisions applicable to all similar cases that may arise in the creation of literary institutions. It can hardly be doubted however that it is entirely consistent with the existing laws to confer ample powers on the trustees by the articles of subscription, to erect the institution and establish it on the basis required by the Regents before applying to that body for a charter. The object proposed by the bill is in the highest degree laudable and meritorious, and if a special act were necessary to its attainment it would receive my cordial concurrence.

To promote the cause of education by all legitimate and constitutional means is a grateful duty dictated by enlarged considerations of public policy, and it is with extreme reluctance that I dissent from any act of the Legis-

lature intended to encourage the efforts of our citizens to improve the intellectual condition of their children. But in the exercise of legislative powers whether intended to advance this or other beneficial purposes, we must not forget those constitutional restraints which were wisely interposed to limit and control our action. The Legislature having provided for the formation of academies by a general law,* it follows that the design of this act may be accomplished without the aid of special legislation. Entertaining this conviction and regarding a faithful observance of the requirements of the constitution as a paramount obligation, I am constrained to return the bill to the House in which it originated."

The bill was not passed over the veto.

April 7. To the Senate:

"EXECUTIVE DEPARTMENT,
ALBANY, *April* 7, 1851.

"I transmit herewith a copy of a communication from the Secretary of the Interior, in reply to a request for information respecting the census of 1850.

It appears that the official returns received at that department are not sufficient to determine what number of representatives this State will be entitled to, in the Congress of the United States, under the next apportionment.

WASHINGTON HUNT."

See Senate Document No. 63, for the communication from the Secretary of the Interior.

April 17. Pursuant to the following concurrent resolution, the Legislature adjourned without day:

"*Whereas,* By the resignation of twelve members of the Senate, a large portion of the electors of this State are un-

* See L. 1851, chap. 544.

represented in that branch of the Legislature, and their views and interests in reference to most important acts which are now pending, or may be presented, cannot be expressed, and legislation under such circumstances would be in violation of the first principles of republican government; *and whereas,* the number of Senators is so reduced by the said resignations and absences that it has been found after repeated efforts that the quorum, required by the Constitution to be present at the passage of bills essential to the continuance of the Government, cannot be obtained.[j] In order therefore to afford an opportunity for a full representation of the people in the Senate,

Resolved, That his Excellency the Governor, be requested to convene the Legislature in extra session, at such time and place as he may deem expedient for the interests of the State."

1851. JUNE 10. EXTRAORDINARY SESSION.

The Legislature convened pursuant to the following proclamation by the Governor:

"*Whereas,* it is represented to me by concurrent resolutions of the Senate and Assembly, that the action of the Legislature has been arrested by the resignation of twelve members of the Senate, caused by a difference of opinion respecting a public measure, between the majority and minority of the Senate; and it being evident that in consequence of the secession from that body of such a number of its members, and the disappearance of another, bills requiring a two-third vote could not be passed, and a quorum for the transaction of business requiring the presence of three-fifths[k] was entirely dependent upon the caprice of a single member, who, after his attendance had been compelled by order of the Senate, again departed without its leave, and thereby prevented the formation of such a

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[j] Const. 1846, art. 3, §§ 10, 15.

[k] Const. 1846, art. 1, § 9; art. 7, § 14.

quorum; *and whereas* the Senate and Assembly, after requesting the Governor to call an extra session of the Legislature, at such time and place as he might deem expedient for the interests of the State, thereupon adjourned *sine die,* having failed to pass the annual appropriation bills, and other pending measures deemed essential to the public welfare and the ordinary support of Government;

And Whereas, the disorganization of the Legislative department, and its consequent inability to complete the performance of its duties in the manner prescribed by the Constitution, form an extraordinary occasion, unprecedented in the past history of this State, and rendering necessary in my judgment an extra session of the Legislature, as early as practicable.

Now, therefore, by virtue of the authority vested in me by the Constitution,[1] I do hereby convene the Legislature to meet at the Capitol, in the city of Albany, on Tuesday, the tenth day of June next, at noon; and the members of the Senate and Assembly are required then and there to assemble in their respective chambers, to consider the several bills pending at the termination of the last session, and to transact such other business as may seem to them expedient.

In Witness Whereof, I have hereunto subscribed my name and affixed the privy seal of the State,
[L. S.] at the city of Albany, the nineteenth day of April, in the year of our Lord one thousand eight hundred and fifty-one.

WASHINGTON HUNT."

June 10. At the opening of the extraordinary session, Governor Hunt sent to the Legislature the following

[1] Const. 1846, art. 4, § 4.

MESSAGE:

FELLOW CITIZENS OF THE SENATE AND OF THE ASSEMBLY.—The abrupt termination of the recent annual session of the Legislature, imposed upon me the responsibility of convening the two Houses in extra session, and of ordering special elections to fill the vacancies created by the resignation of members.

While I felt reluctant to burthen the treasury with an extraordinary expenditure, and to subject you to the inconvenience of reassembling at the Capitol at this unusual season, the condition of the public business at the time of your adjournment in April, was such as to render further legislation indispensable to the ordinary administration of the Government; and in this posture of affairs, a sense of duty constrained me to act with promptness in adopting the only mode of proceeding which seemed adequate to the occasion.

The annual appropriation bills and many general measures affecting the public welfare, which were left unfinished, should receive final action as early as practicable; and in the discharge of this duty, your own wishes, no less than the interests of your constituents, will prompt the utmost dispatch which you may deem consistent with prudent and judicious deliberation.

It is a subject of gratifying reflection, that, in the elections recently held, so large a portion of the people of the State, rising above all party divisions, should have proclaimed their adherence to the vital principle of our institutions, which clothes a constitutional majority with the power to decide public questions and control the action of our representative bodies. The temporary prostration of the legislative power, by the secession of a minority, was an event which could hardly fail to produce a deep impression upon the public mind.

A proceeding of this character had never before occurred since the formation of a republican government in this State. It was not the first time in the course of our State

and national progress that wide differences of opinion had arisen in our legislative bodies respecting the expediency of public measures and the legitimate construction of constitutional provisions. But hitherto, in seasons of high popular excitement, when the violence of party spirit seemed to defy control, and when political divisions were most equally balanced, the encounters of debate have ceased, and the gravest conflicts of opinion have yielded to the deliberate judgment of the majority. The diversities of sentiment which arise in the administration of a popular system, are to be viewed as a necessary incident of self-government. Our past experience has shown that the utmost freedom of discussion is not inconsistent with the restraints of the Constitution,[m] and that the controversies produced by opposing views of public questions are not hostile to the stability of democratic institutions. The cheerful acquiescence of the whole people in the ascertained will of the majority, has ever constituted the brightest feature of our history, furnishing indisputable proof of the wisdom of our republican theory, and the capacity of our citizens for the exercise of political responsibility. This principle of submission to the voice of the majority, expressed through the forms of the Constitution, is fundamental and organic; it pervades and animates our admirable system of regulated liberty, and constitutes our only shield against the disorders of faction. Its practical recognition has thus far happily distinguished our country from those ill-fated democracies, ancient and modern, which have sunk beneath the violence of popular strife and insubordination.

You will doubtless esteem it among the first of your duties to resume the consideration of the important subject which was under discussion in the Senate when its proceedings were so suddenly arrested.

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[m] Const. 1846, art. 1, § 8.

The merits of the measure, and the objections which have been advanced in opposition to it, should receive your calm and impartial deliberation. In my annual message to the Legislature, I deemed it my duty to invite your attention to the interesting subject of our canal policy, and to present some considerations which appeared to me conclusive in favor of the early completion of our unfinished canals. The convictions which were then expressed in relation to the expediency of consummating these improvements, so many years in progress, have gained strength from subsequent reflection and discussion. The importance of the trade and revenues of the Erie canal to the prosperity of the State, is conceded by all. No public work of any age or country has contributed so largely to the welfare and happiness of a whole community. Every interest in the commonwealth has felt its vivifying influence. The towns and cities which it has created; the unparalleled prosperity of our principal emporium; the giant strides of Western New York in wealth and improvement; and, above all, the commercial supremacy of the State, may be pointed to with honest pride by all our citizens, as enduring memorials of the wisdom which conceived, and the energy which consummated the noble design of opening a water communication to unite the lakes with the Atlantic. It would not be difficult to demonstrate that the Erie canal has added more than three hundred millions in value to the property of our people. Its effects upon the public treasury are no less striking and satisfactory. Its revenues, after paying the cost of its original construction, are rapidly reducing the debt incurred in its enlargement, and in aid of other improvements. That the early completion of a channel which has yielded these beneficent results, would injure the State or endanger its liberties, is an apprehension condemned by experience, disowned by reason, and only to be regarded as the dismal phantasy of a sombre and distempered imagination, rejecting all grateful memories of the past and disdaining all generous hopes of the future.

It is now fifteen years since the work of enlargement was commenced. The main purpose of the undertaking was to create a channel with sufficient capacity for boats of 150 tons burthen, by which producers and consumers will be relieved from about one-half the present cost (excluding tolls) of canal transportation. Towards the accomplishment of this design we have expended over sixteen millions of dollars. Nearly all the expensive structures have been completed for the passage of boats of heavy tonnage; but this avails nothing towards the definite object of the improvement, until the last mile of excavation is finished. At the present rate of progress, from ten to fifteen years will be required to perfect the work. This tardy operation requires a full organization of officers and engineers, and is attended with a large increase of expense, and a heavy loss of interest. In this condition of things the real if not the only question presented is, whether a work of such vast importance, admitted by all to be necessary, and upon which so much has been done, shall be procrastinated from year to year until a generation shall have disappeared, and many of the benefits of the improvement have been surrendered to competing avenues of trade; or shall the plan be prosecuted with vigor, and completed as other useful enterprises are carried forward in this age of advance and achievement?

In considering the subject with reference to our future policy, it becomes important to form a correct estimate of the growing value and extent of the Western trade, and to keep in view the peculiar advantages of our geographical position. It depends mainly upon our own legislation whether the Erie canal shall continue to be the chief outlet for the vast and fertile region stretching from the Lakes to the Mississippi. If wise and liberal views shall guide our councils, we have the ability to command, during all future time, the commerce of a territory larger than Europe, embracing several of the most prosperous States of the Union, which, though yet in their infancy, are advanc-

ing beyond example in population and resources, and in the construction of internal communications which in effect are but an extension of our own.

The commercial relations created between this State and its Western neighbors, by opening for them an easy channel of navigation from the Lakes to the seaboard, have yielded and must continue to confer reciprocal benefits upon both. In giving to them the advantage of cheap access to the Atlantic markets, we enhance the value of their soil and productions, while we acquire for our own citizens the profits of the carrying trade and the varied benefits which spring from a healthful and expanding commerce. In this connection it should be remarked that the increase of production from year to year in the States tributary to Lake Erie is larger than their entire surplus at the first opening of the Erie canal. The people of those States, so closely identified with us in interest and feeling, are not insensible to these advantages; and it is creditable to their intelligence, that they should look forward with anxious solicitude, as we are assured they do, to the completion of the Erie enlargement.

In considering the financial bearings of the subject, we should remember that our Treasury derives a noble revenue from the Western trade, as an equivalent for the facilities of transit which this State has created. The proportion of canal tolls derived from tonnage coming from or going beyond our borders, is steadily increasing. The amount collected in the year 1850, at Buffalo and Oswego, on the productions of other States, was $1,013,631.58, to which should be added the amount received at the Eastern offices on returns of merchandise. The receipts at the same ports for the present season exhibit a gratifying increase. Thus it will be perceived that a large share of the means for the gradual payment of the State Debt, as well as for completing our unfinished works, is to be furnished, not by our own citizens, but by neighboring communities, whose

trade has been attracted by our liberal canal policy; and in connection with this view, a just estimate of the increase in trade and revenue which will result from the enlargement of the Erie and Oswego canals must dispel all apprehensions of future embarrassment and taxation. Unless the calculations of increased tonnage upon which the Erie enlargement was originally based shall prove to be fallacious, it is evident that the State will be relieved from debt at an earlier period by prosecuting the work to a speedy completion, than by postponing it for a long series of years. A careful examination of the subject must also convince every practical mind that an early consummation of the improvement will shorten the period which must elapse before the canal revenues will be released and made applicable to the ordinary expenditures of the State, so as to relieve the people from taxation for the support of government. Then, freed from debt, with a revenue from its public improvements without example in the history of governments, the State will have an inexhaustible fund for the support of education, the encouragement of art and the relief of the unfortunate, without the intervention of assessors and tax-gatherers.

In surveying the financial condition and prospects of the State, it is important to observe, that after completing the canals already in existence, no further improvements which can create a burthen upon the people will remain to be accomplished by the Legislature. No new canals are proposed. The aid of the State for construction of railroads is no longer needed or solicited. Thus we perceive that after perfecting what has been commenced, there will be neither necessity or excuse for new enterprises at the cost of the Treasury, beyond the judicious application of the ample revenues which the canals, when released from all incumbrances, will place at the disposal of our successors.

Whether the State continues to possess those sovereign powers and faculties which are necessary to expedite the completion of the canals, without transcending the limita-

tions of the Constitution, is a question which demands your enlightened consideration. Assuming the necessity for action to be established, you are called upon to determine in what manner the object shall be attained.

In communicating my views at the commencement of the annual session, I deemed it most becoming and respectful to submit this question to the superior wisdom of the Legislature; entertaining on my part an earnest desire to cooperate in any practical measure which you should deem free from constitutional objection. Regarding the considerations in favor of a more efficient and vigorous progress as paramount and self-evident, I did not hesitate to recommend such an amendment of the Constitution as should confer the requisite authority, if in your judgment no judicious plan of action could be matured consistently with the financial provisions of that instrument. Our first and highest obligation is to preserve inviolate the principles of the organic law which we have sworn to support. Whatever differences of opinion may arise touching the interpretation of particular provisions, it should be our constant aim to give full effect to all its requirements. No considerations of expediency or even of necessity can justify a departure from its true intent and spirit. The financial provisions of the Constitution were intended not to defeat but to ensure the completion of the Erie Enlargement and the Black River and Genesee Valley canals. For nearly five years these works had been suspended. A majority in the Convention of 1846 determined that they should be resumed and finished. They dedicated the entire surplus Canal revenue to this object, after making certain reservations for the payment of the existing debt, and the support of Government.

It is hardly conceivable that they would have refused to permit the early accomplishment of an object for which they so carefully provided, if it could have been supposed that individuals would consent to furnish the necessary means at once, on a simple assignment of the surplus, with

special conditions that the purchasers should receive the transfer at their own risk, without recourse to the State in any contingency. Is it reasonable, is it just to the reputation of men eminent for their wisdom and sagacity, to conclude that while requiring the performance of a work they nevertheless intended to deprive the Legislature of the power to employ the means which they placed at its disposal in such manner as to execute the design in the most economical manner and in the shortest possible period?

While a pledge of the revenue in the nature of a collateral security for the payment of moneys borrowed upon the general credit of the State, would clearly fall within the prohibition of section 12, article 7, of the Constitution, it seems equally clear that an absolute assignment of the surplus, at the risk of the holder, made for the purpose of obtaining funds in advance to perform the very work for which such surplus is appropriated by the Constitution, must be within the discretion of the Legislature. This proposition is established by the arguments of able and eminent jurists, whose opinions have been heretofore submitted to your consideration.

The constitutional power of the Legislature to authorize an assignment of the surplus, without recourse to the State in case of deficiency, with a view to realize the funds in advance, for the purpose of attaining at once the object to which the surplus is pledged by the Constitution,[n] never appeared to me to be doubtful. But it is proper for me to observe, that in my annual message I refrained from recommending a resort to this mode, from an apprehension that holders of capital might hesitate to invest their funds in a stock containing no obligation or guarantee by the State for the sufficiency of the revenue, and for the payment of principal and interest in case of deficiency. Your attention was called to the objections which seemed to conflict with the feasibility of the plan. These objections and

[n] Const. 1846, art. 7, § 3.

my apprehensions have been obviated in the well matured provisions of the bill now pending before the Senate, and by reliable assurances that capitalists stand ready to purchase the proposed revenue certificates on terms favorable to the State.

The steady increase of canal tolls for years past, and the constant growth of the Western states, from which a similar progress may be anticipated in future, seem to have inspired a firm confidence in the sufficiency of the revenues, even among those who are least inclined to be credulous upon such subjects. On this point it is satisfactory to observe, that notwithstanding the recent reduction of 25 per cent in the rates on flour and wheat, the amount of tolls received for the first six weeks of navigation the present season was $773,188.25, being an increase of $170,860.53 over the corresponding period of last year. Nor need there be any apprehension that the Canal revenues will be diminished, after the completion of the enlargement, by the competition of railroads; it having been demonstrated that those bulky commodities from which the largest amount of toll is derived, can be conveyed at a less cost by the canal than by any other artificial mode of transportation. [See note 1.]

The enlargement of the Oswego canal is a subject which demands your early and favorable consideration. It is of the utmost importance to the public interests that this improvement should be accomplished simultaneously with the enlargement of the Erie canal, in order that the two main channels of transportation communicating with the lakes may be placed on a footing of equality in respect to canal boats of the largest capacity. Instead of viewing the Erie and Oswego canals as conflicting and hostile interests, I cannot but regard them as essential parts of a wise and harmonious system of internal navigation, both having equal claims upon the favor of the State, and being equally necessary to attract the trade of the Western States and the Province of Canada to our commercial emporium.

Partial provision was made for the improvement of the Oswego canal by the Legislature of 1847, by appropriating $100,000 of Bank Fund stock which belonged to the Canal Fund at the adoption of the Constitution in 1846. Although no portion of the canal revenue is applicable to this object, no objection is perceived to a direct loan of the amount required for the completion of the work under the 10th section of the financial article.[18]

It affords me sincere satisfaction to be enabled to congratulate you on the final completion of the New York and Erie Railroad. This stupendous work, after receiving an impulse from the partial aid of the State, has been consummated by the matchless energy and unfailing perseverance of a small portion of our citizens, acting in concert and with a determination to surmount obstacles which seemed for years to be invincible. They have executed their design at a cost of over twenty millions of dollars, being more than twice the amount now required by the State to finish the enlargement of the Erie canal. The completion of this great highway cannot fail to confer lasting benefits upon the people of the southern tier of counties, whose position had long excluded them from an equal participation in our system of internal improvement. It adds another link to the golden chain which unites New York to the States of the northwest, by the voluntary ties of reciprocal commerce, mutual interest and fraternal attachment.

It should be our constant aim to secure the trade of these vast communities beyond us. This prize is to be won, not by one route or channel monopolizing the whole, but by a generous competition, cheapening transportation, and presenting those varied facilities and inducements which will give permanence to our commercial relations with our neighbors, making them alike beneficial to both. A broad

[18] Chapter 343, passed July 1, reappropriated for the Oswego canal the unexpended balance of an appropriation of $100,000 made for the same purpose in 1847.

and liberal view of the subject must satisfy all unprejudiced minds that the supposed conflict of interest between our canals and railroads is more apparent than real. Each mode of communication will have its appropriate labor to perform, and in their efforts to secure the traffic to which they are adapted, they must contribute in no small degree to the success of each other. There is no occasion to apprehend that the improved means which we may supply for the convenience of the Western trade and travel will outstrip the constant increase of production and business between the Lakes and the Mississippi.

From the returns of the census received at the Department of the Interior, it appears that this State will be entitled to thirty-three representatives in the Congress of the United States, under the enumeration and apportionment of 1850. Our population has advanced from 2,428,921 to 3,090,022 in a cycle of ten years; yet without any change of numbers in the popular branch of Congress, this State will suffer a loss of one member in its national representation. This fact presents an impressive illustration of the rapid progress of the new States in the west.[19]

Concerning the ordinary topics of legislation submitted to your attention in my annual message, and still undisposed of, I deem it sufficient to reiterate the views heretofore expressed, and to recommend that they may receive such early action as your sense of public duty shall dictate.

In conclusion, I avail myself of the occasion to express my ardent hope that a spirit of elevated patriotism may inspire your councils, and that your deliberations, under the blessing of Providence, may tend to perpetuate the honor of the State and the welfare of the people.

WASHINGTON HUNT.

Executive Chamber, Albany, June 10, 1851.

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19 A congressional apportionment, dividing the state into thirty-three districts, was made by chapter 499, passed July 10.

SPECIAL MESSAGES.

June 13. To the Senate:

"EXECUTIVE DEPARTMENT,
ALBANY, *June* 13, 1851.

"I communicate herewith a copy of letters received from the Secretary of War, and Brevet Colonel G. Wright, commanding Fort Ontario, in relation to a bill now pending before the Legislature, granting to the town of Oswego certain lands below low water mark, in the vicinity of Fort Ontario.[20]

WASHINGTON HUNT."

It appears from the letters transmitted [Senate Document No. 82] that the pending bill proposed to cede to the city of Oswego land below low water mark on the Oswego River, and in front of lands jurisdiction over which had been ceded to the United States for military purposes, and was then occupied by that government. The Secretary of War said that if wharves and warehouses were erected on the land proposed to be ceded to Oswego, they would mask the fire from a portion of the fort, which is intended to protect the inner harbor, and to provide for which was one of the objects of the late repairs on that work. Colonel Wright expressed the opinion that the action of the general government would be necessary before the land in front of the shore could be taken, and suggested that the low water mark was not permanent, but changing with the rise and fall of the lake.

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[20] The objections presented by the federal authorities to the proposed grant to Oswego of land under water in front of land already ceded to the United States, did not prevent the passage of the pending bill, which became a law, chapter 288, on the 25th of June. It authorized the commissioners of the land office to grant the land to the city, but with the provision, apparently added to meet the federal objections, "that no buildings shall be erected upon the land so granted without the written consent of the Secretary of War, or by authority of Congress."

June 20. To the Senate:

Veto of a bill entitled "An act to amend an act passed April 26, 1831, to incorporate the village of Plattsburgh."

"This bill is intended to confer authority upon the inhabitants of said village to raise by tax, a sum not to exceed two thousand dollars, for the purpose of purchasing a fire engine, &c. The first section provides that a special meeting of the inhabitants may be held for that purpose, on the first Tuesday of July next; and requires that public notice of the object, and of the time and place of holding such meeting, shall be given, by publishing the same in the public newspapers printed and published in said village, for three weeks next preceding the time of holding such meeting.

As the time thus fixed for holding the meeting will arrive in ten days from this date, it will be impossible to give the prescribed notice, and I apprehend that any proceedings under the act, if it should become a law in its present form, would be of questionable validity. I deem it my duty, therefore, to return the bill to the body in which it originated, and to recommend that it may be so amended as to ensure the objects contemplated by its passage."

The bill was not passed over the veto.

June 30. To the Assembly: Transmitting an abstract of the seventh census, 1850.

July 11. To the Senate:

Veto of a bill entitled "An act to incorporate the Madison Association."

"The design of this bill is to create a corporation, with power to lease or to purchase, and hold and convey real estate in the city of New York, not exceeding fifty lots, and to erect thereon a hotel and other buildings, and to make

such improvements thereon, and to transact all such business as may necessarily appertain to the erecting, constructing, furnishing, leasing or otherwise disposing of said lots or parcels of land, buildings and improvements thereon.

I feel constrained by my convictions of public policy, to withhold my approval from this proposition. It would be impracticable now, in the last hour of your session, to present at large, the views which control my action: but I deem it sufficient to state in general terms, that in my opinion, there is no necessity for creating a body corporate, with special privileges for the attainment of the objects contemplated by this act: that it would conflict with the public interests, and with our established public policy, to grant charters for purchasing, holding and dealing in real estate, with a view to private profit, disconnected from any public purpose; and that inasmuch as every citizen is free under our general laws, to engage in all the transactions authorized by the bill, it would be unwise to interfere with this branch of business by special legislation. If this charter is granted, we must expect that similar applications will follow; and I cannot yield my assent to a measure which, while called for by no public considerations, might become a dangerous precedent, and lead to a course of legislation repugnant to the Constitution,* and to the equality which it was intended to establish."

The bill was not passed over the veto.

July 11. The Legislature adjourned without day.

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* Const. 1846, art. 8, § 1.

1853. JANUARY 6. LEGISLATURE, SEVENTY-FIFTH SESSION.

WASHINGTON HUNT, Governor.

ANNUAL MESSAGE.

FELLOW-CITIZENS OF THE SENATE AND OF THE ASSEMBLY.—The opening of the seventy-fifth annual session of the Legislature of New York, since the establishment of our republican Constitution, is an event peculiarly suggestive of grateful memories and patriotic hopes. Three quarters of a century have passed away since our ancestors, uniting with the sister colonies in renouncing dependence on a distant monarchy, and appealing to Heaven for the justice of their cause, proclaimed the sacred right of self-government, and assumed the attitude of a free and sovereign State. It is profitable to recur to the spirit of wisdom and patriotism which guided our legislative councils at that trying period. Compelled to deliberate amid the strife of opposing armies, and surrounded by difficulties which called for the highest exercise of capacity and energy, your early predecessors gained a double title to the public gratitude. While their prudent but vigorous measures sustained our arms and carried the country in triumph through its long struggle for independence, they accomplished the more difficult work of framing a system of representative government based upon principles of justice, equality and social order, combining popular freedom with those salutary restraints which history has shown to be necessary for the protection of the citizen in the peaceful enjoyment of his rights.

Experience has vindicated the wisdom of the political theory adopted by the statesmen of the revolutionary era. Within a period comparatively brief in the history of governments, the American Union has attained a prominent rank among the nations of the earth; and New York, the feeble and bleeding colony of 1776, has become a great and powerful commonwealth, holding a high place among the

States of the confederacy. Under the beneficent operation of free principles, our progress has been rapid beyond example. The blessings of liberty and security have stimulated the best energies of our people and developed their capability for moral, intellectual and physical improvement.

A system of education by which knowledge is placed within the reach of all, and our youth are taught to comprehend the rights and duties of citizenship; the supremacy of law and order; a rapid proficiency in the arts which multiply the enjoyments and elevate the character of society; artificial communications connecting the ocean with the lakes beyond our borders, and dispensing to every section of the State the benefits of easy intercourse; the consequent advancement of every agricultural, mechanical and commercial interest, are results which serve to demonstrate the advantages of free institutions, and the capacity of our people to preserve them in their original vigor and integrity.

When we contemplate a scene so gratifying, and reflect upon the progress that has been made by the inhabitants of this continent in the short space of two centuries, in advancing the welfare of mankind, the mind is filled with gratitude towards the Supreme Ruler of the world, whose moral government guides the destiny of nations.

In the discharge of my obligation to communicate to the Legislature information respecting the condition of the State, I would first invite your attention to the situation of the finances.

The amount of the State debt at the close of the last fiscal year September 30, 1851, was as follows:

Canal debt	$15,301,109.16
General Fund Debt	6,389,693.32
	$21,690,802.43

Showing a reduction of principal in the past year of $840,000. It is believed that the amount of the debt, as now reported by the financial departments, cannot be materially varied by the unliquidated claims existing anterior to the creation of the Sinking Funds by the Constitution of 1846.[a]

At that time large sums were due to citizens on canal contracts partly executed, and for private property taken for canal purposes. These claims constituted in fact part of the public debt then subsisting, and the Legislature afterwards made them expressly chargeable upon the Canal Sinking Fund. But as the amount due on them was uncertain, and could not be ascertained until a final adjudication by the Canal Appraisers or the Canal Board, this portion of the liability was not included in the original or subsequent exhibits of the funded debt. Hence the payments made from the Sinking Fund on that class of obligations, though reducing the debt in reality, did not diminish the apparent amount as shown in the annual report of outstanding stocks. The most of the unliquidated claims have now been extinguished, and the future reduction, by the operation of the Sinking Fund, will be regular and rapid, and more effective than heretofore upon the funded debt. It is safe to assume that the entire debt existing at the adoption of the present Constitution, will be discharged by the annual contributions from the canal revenue to the Sinking Funds, within seventeen years.

The amount of money in the treasury on the 30th of September, belonging to all the funds was $1,897,048.25. The balance in favor of the General Fund on that day was $15,753.87. It is estimated that the current revenues of the General Fund, during the present fiscal year, will be sufficient for all the ordinary expenses of government, including the special appropriations made by the last Legislature. This estimate does not include the moneys to be

[a] Const. 1846, art. 7, §§ 1, 2, 3.

derived from the next tax sale, which is to be held before the close of 1852, and which will yield about $175,000; nor the further amount due the treasury for arrears of taxes assessed on mutual insurance companies and certain Indian reservations, from which about $150,000 ought to be realized in the course of the coming year. Proceedings in relation to some of these taxes have been long pending in the courts, and it is hoped they will soon be brought to a final decision. In considering the various applications that will come before you for grants of money in aid of public enterprises, it is important to keep in view the actual condition of the treasury, and to limit the appropriations within the reliable revenues of the General Fund. This fund is fully sufficient for all ordinary purposes, so long as our legislation is governed by correct views of economy; and the additional resources above referred to will enable you to make some provision for new objects of public utility.

In selecting those objects, you will doubtless exercise a just discrimination, independent of all extraneous influences; and in the ordinary appropriations it is believed that some reductions may be made without injury to the public service.

The act passed by the last Legislature, intended to compel the assessors to estimate taxable property at its full value, has resulted in a large increase of the valuation. In 1850, the entire real and personal estate was assessed at $727,494,583; and in 1851, the total assessment was about $1,100,000,000, being an increase of nearly $400,000,000. This produces a corresponding increase in the proceeds of the half mill tax, which is predicated on the entire valuation. The State tax ought not, under any circumstances, to be larger than is necessary for the support of a wise and economical administration. I would recommend a careful examination of the subject, with a view to determine whether the half mill tax may not safely be reduced to a smaller ratio. Notwithstanding the important amendments

adopted by the last Legislature, it is believed that the assessment laws require some further modifications for the purpose of securing a more equitable distribution of the public burthens.[1]

While real estate of every description is assessed at its full value, considerable masses of capital in other forms continue to escape taxation. This inequality should be removed. Justice and good policy require that all property, having the protection of our laws, should be reached by assessment, and made to sustain the public authorities, upon principles of uniformity, except in special cases where it may be deemed beneficial to the State to grant an exemption from taxation by express legislation.

The amount derived from the canal revenues during the last fiscal year was $3,722,163.11; being an increase of $235,990.81 over the receipts of the previous year. After deducting the expenses of superintendence and repairs, and contributing $200,000 for the support of government and $1,650,000 for payment of interest and reduction of principal of the State debt, there remained a surplus of $964,-432.91 applicable to the completion of the Erie Canal Enlargement, and the Genesee Valley and Black River canals.

It should be remembered in this connection, that the increase of tonnage was in a larger proportion than the increase of revenue, the rates of toll on flour and wheat having been reduced 25 per cent. at the commencement of the last season of navigation.

Some progress has been made in the execution of the act passed July 10, 1851, "for the completion of the Erie Canal Enlargement and the Genesee Valley and Black River canals." In pursuance of its provisions, the Comptroller has issued six per cent revenue certificates to the amount of $1,500,000, for which a small premium was realized. A portion of the proceeds has been expended in forwarding

[1] By chapter 315, passed April 15, the tax rate was reduced to one quarter of a mill on a dollar.

that part of the work which had previously been put under contract, as exhibited in the last annual report of the State Engineer and Surveyor. The Canal Board having first given the public notice required by law, have received proposals and awarded contracts for executing the remainder of the work at prices considerably below the Engineer's estimates, upon which the recent law was predicated; and the early completion of the three canals provided for by the Constitution, may now be regarded as a point definitely settled.[b]

It is a subject of sincere congratulation that the measure adopted at the last session, to expedite the prosecution of the unfinished works, has received the sanction of public opinion, expressed in the choice of official agents whose views in favor of the policy, and whose determination to co-operate in the vigorous execution of the law, were openly declared. While enlightened men of all parties have long seen and felt the importance of speedily perfecting our internal communications, on which so many millions have been expended, it cannot be deemed surprising that honest differences of opinion should have existed as to the precise mode and manner of attaining the object. The spirited discussions of the last year appear to have produced a settled conviction in the public mind, that the plan adopted is the most feasible and judicious that could be devised, within the limitations established by the financial provisions of the Constitution.[c] Happily for the public welfare, our internal improvements have been rescued from the strife of parties, and must now cease to be a subject of political controversy. I consider it a proud day for the Commonwealth, when its leading statesmen of both political parties, emerging from unfavorable antecedents, are found concurring in support of a wise and liberal policy, and vieing with each other in a spirit of generous emula-

[b] Const. 1846, art. 7, § 3.

[c] Const. 1846, art. 7.

tion and patriotic zeal for the advancement of a work which had become so essential to the public prosperity.

Nothing remains but to proceed with united councils in carrying out the system which is now regarded on all hands as fixed and established. In our future deliberations on the subject, former prejudices are to be discarded and past divisions forgotten. Let us come together in a spirit of mutual confidence, and unite our efforts to guard and protect the public interests, in disposing of the various questions that must arise from time to time in the progress of this great undertaking. In this, as in the management of all our public concerns, especially those of a practical business character, party spirit should be banished utterly, as the worst enemy of the people.

The completion of the canals is predicated upon the surplus tolls set apart for that purpose by the Constitution.[d] The revenue certificates authorized by the existing law operate, in effect, as a transfer of these surplus tolls, in anticipation of their receipt, without any obligation or guarantee on the part of the State for the redemption of the certificates from any other fund. It was evident from the first that the success of the plan must depend upon the degree of confidence entertained by the public in the future sufficiency of the canal revenues.

The steady increase of the western trade, as exhibited by the returns from year to year, ought to dissipate all apprehensions concerning the future productiveness of the source from which the certificates are to be redeemed. It has been shown that the annual contributions to the Sinking Fund (being $1,650,000 until 1855 and afterwards $2,050,000 per annum) will discharge the entire State debt in about seventeen years. When that result shall have been reached, inasmuch as no new debt can be charged upon the surplus canal revenues, they will be released and become

[d] Const. 1846, art. 7, § 3.

exclusively applicable, by express constitutional requirement, to pay the certificates issued for completing the canals, unless the surplus shall have proved sufficient to extinguish them at an earlier day. If past results furnish a safe indication of the future business of the canal, it can hardly be doubted that the annual surplus will discharge the certificates in a shorter period than is required for the payment of the present debt; but if this anticipation should be disappointed, they will be rapidly extinguished after the existing stock shall have been paid.

The extent of the annual surplus must depend upon the prudent regulation of the canal tolls. That important responsibility has been devolved upon the Canal Board, subject to the control of the Legislature. It is made their duty by the 11th section of the act of the last session to adjust the rates "in such manner as in their judgment will produce the greatest amount of trade and revenue." The whole community are concerned in the wise and faithful performance of this obligation. It is of vital importance to the rights of public creditors and the soundness of a large portion of our currency. While good faith and so many pervading interests concur in demanding stability, there can be no good cause for apprehending that the representatives of the people will venture upon rash or doubtful experiments. Reductions of toll on certain articles have resulted in an increase of trade and revenue; and the same policy may doubtless be extended with advantage to some additional branches of tonnage, such as cotton, tobacco, &c., from the States in the southwest. But constant care and an enlightened discrimination will be required to avoid all reductions which are calculated to affect the revenue unfavorably, until the obligations resting upon the canal incomes shall have been satisfied. It should be constantly borne in mind that inasmuch as the revenues have been pledged for the specific payment of the debt and the redemption of the certificates, we no longer

possess the moral or constitutional right[1] to make changes which shall impair their sufficiency for these purposes.[2]

The funds devoted to school purposes are believed to be in a safe and healthy condition. On the 30th of September, the capital of these several funds was as follows:

Common School Fund	$2,325,449.72
United States Deposit Fund.....	4,014,520.71
Literature Fund	272,880.12

Making an aggregate of $6,612,850.55 invested in productive securities for the advancement of education.

The annual report of the Superintendent will present a complete view of the operations of our common school system.

The number of children taught during the year was 726,291; the whole amount expended for teachers' wages, including books for school libraries, was $1,432,696. Under the present law the State furnishes $1,100,000 of the amount required annually for the support of the district schools, viz: $300,000 from the income of the School Fund and $800,000 required to be raised yearly by State tax. It is estimated that the sum thus furnished from the treasury will be sufficient, in most cases, to make the schools free for six months in each year; leaving it for each district to provide means by rate bills for such additional period as the school may be taught.

The act passed by the last Legislature was adopted as a compromise of conflicting opinions, and appears to have been received with general favor by the community. It has put an end to the controversies produced by the unequal operation of the law of 1849, which had for some time agitated the public mind and kept the districts in a state

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[1] Const. 1846, art. 7, § 3.

[2] The act of 1851, chapter 485, to which the Governor referred, was held unconstitutional by the Court of Appeals in Newell v. People (1852), 7 N. Y. 9. See 1851, note 1, *ante*, p. 549.

of fermentation. It is gratifying to observe the return of that harmony which is essential to the successful working of a system of popular education. In considering any further changes that may be proposed, we should endeavor to avoid any experiment calculated to reproduce the divisions that have been so happily, but with so much difficulty, healed.

In pursuance of a resolution of the last Assembly, I appointed Samuel S. Randall a commissioner to embody in a single act a common school code for the State. His report will be placed before you at an early day, and will doubtless receive the respectful consideration due to recommendations coming from one whose long experience and enlightened zeal in the cause of education are widely and justly appreciated.

The ordinary appropriations in support of Colleges were omitted by the two last Legislatures. The present condition of the United States Deposit Fund is such as to justify a moderate grant in aid of the higher institutions of learning, and I would renew the recommendations in their favor, contained in my last annual message. Several new institutions, including the Genesee College and the Rochester University, which have not yet enjoyed the public bounty, present strong claims to encouragement, and it would seem but just and reasonable that they should be admitted to an equal participation in the patronage of the State. The University of Albany has been organized under favorable auspices, and if the design of its patrons and professors shall be realized, it will ultimately be made equal to the best universities of Europe.

Much interest has been manifested for some years past in favor of creating an institution for the advancement of agricultural science and of knowledge in the mechanic arts. The views in favor of this measure expressed in my last annual communication, remain unchanged. My impressions are still favorable to the plan of combining in one

college two distinct departments for instruction in agricultural and mechanical science; but many, whose opinions are entitled to weight, contend that a separate establishment for each branch would be most advantageous to both. Before adopting any final action on the subject, the merits of the several systems of organization that have been proposed should be maturely considered. I would respectfully recommend that a sufficient portion of the proceeds of the next sale of lands for taxes be appropriated to the erection of an institution which shall stand as a lasting memorial of our munificence, and contribute to the diffusion of the useful sciences and the elevation of the producing classes, during all future time.

Our charitable institutions continue to fulfil the beneficent purposes for which they were designed. The particular condition of these establishments will be presented in the annual reports of their officers. We may contemplate with intense satisfaction the blessings that have been conferred upon the children of adversity by the humane spirit of our past legislation. The State has given its powerful aid to every plan of practical philanthropy calculated to ameliorate the condition of the unfortunate. So far as human skill can supply the faculties of which they have been deprived by their Creator, the blind have been made to see, the deaf to hear, and the dumb to speak. Liberal provision has been made for the infirm and the destitute; the paternal guardianship of the Legislature has been extended to the fatherless, the insane, and even to the idiotic. I cannot too strongly commend the agencies by which these generous aims are accomplished to your fostering care and attention.

It appears from the official report that the number of inmates in the State Lunatic Asylum at Utica, on the 30th of November last, was 435; the number in the Lunatic Asylum on Blackwell's Island on the 20th of December, was 523.

The total number of insane persons in this State in 1850, as shown by the census of that year, was 2,506, of whom 1,106 were in asylums, leaving 1,400 to be supported in private families or poorhouses. It is evident, therefore, that some further provision ought to be made for the relief of this unhappy class of our fellow beings. The number of pupils in the Institution for the Deaf and Dumb at the close of the year, was 244, of whom the State supports 160.

The New York Institution for the Blind contained one hundred and thirty-nine inmates, of whom eighty-six are State beneficiaries. In pursuance of the act passed by the last Legislature, the trustees appointed for the purpose have established an Asylum for idiots. They have fortunately secured the services of Dr. H. B. Wilber as Superintendent, whose efforts for the improvement of imbeciles have been attended with great success. A suitable building was procured in the vicinity of this city, and the school has been opened under encouraging circumstances. The report of the Trustees will present their proceedings more fully, and impart some valuable information in regard to the merits and prospects of this noble undertaking.[3]

The Houses of Refuge for the reformation of juvenile delinquents have been administered with a degree of fidelity and success which reflect high credit upon the

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[3] Chapter 97, passed March 25, provided for the instruction of one additional deaf mute from each Senate district in the Institution for the Instruction of the Deaf and Dumb. Chapter 333, passed April 16, continued the New York Institution for the Blind and provided for the instruction therein of four indigent blind persons between twelve and twenty-five years of age, from each Senate district, which number should include indigent persons already designated by the superintendent of public instruction as pupils in the institution.

Provision for ascertaining the number and residence of idiots was made for by chapter 378, passed April 16. The appropriation act, chapter 407, passed April 17, authorized the expenditure of $1500 for the support of ten additional pupils in the asylum for idiots.

managers of those institutions. At the date of the last return the number of inmates was as follows:

New York House of Refuge	393
Western House of Refuge	128

Some further legislation is recommended in regard to youthful convicts between the ages of sixteen and twenty. As the power of the courts to send delinquents to the Houses of Refuge is confined to persons under the age of sixteen, many young offenders who have passed that age are sentenced to hard labor in the State Prison for a term of years. Some of them are the victims of early abandonment, ignorance, and vicious associations; and if placed in a proper school for reformation, might be restored to virtue and prepared for a life of honest industry. It is worthy of consideration whether a separate department for this class of offenders should not be added to our present Houses of Refuge, or erected as a distinct establishment.

The important institutions in the city of New York, under the supervision of the Governors of the Alms House, are in excellent order and condition. The expenses have been largely reduced, the discipline improved, and every branch of their management gives evidence of skill, efficiency and fidelity.

After the adjournment of the last Legislature, regarding it as a duty to obtain the best information on subjects pertaining to my official action, I visited each of the State prisons and made a personal examination of their condition. The result was, in most respects, highly satisfactory. Great improvements have been made in the system of prison management and discipline. Experience has shown that a humane administration is more favorable to subordination than stern, despotic severity. Every practicable arrangement seems to have been made for the health, comfort and moral improvement of the convicts.

Much praise is due to the officers, chaplains and physicians for their efforts to amend the condition and reform the minds of the wretched beings who have been banished from society to expiate their offences against its laws. Many have been redeemed from the deepest degradation by the influence of kindly teaching and example. The endeavors of the Inspectors to improve the financial management of the prisons, have been attended with considerable success. No branch of the public service requires more constant vigilance to ensure integrity and economy in the expenditures. A striking improvement is perceptible in the affairs of the Sing Sing Prison. For the first time in many years, its officers deem it unnecessary to call on the Legislature for pecuniary aid.

The finances of the Auburn prison are in a less prosperous condition, and a considerable appropriation will be required for its support. This necessity has been produced partly by a large expenditure in erecting new buildings, which had become indispensable.[4]

From a careful examination of the subject, I am convinced that the unfavorable results at Clinton Prison may be attributed in part to the incomplete execution of the original plan, which included the necessary works for making iron and manufacturing it in some of its ruder forms. That part of the design has been neglected. No forges or furnaces have been erected, and the employment of prisoners has consisted in excavating and separating the ore; an operation which affords but little profit in the present condition of the iron market. The difficulty has been increased by the failure of ore on the land held by the State, making it necessary to pay a heavy rent for the privilege of working on an adjacent tract. A result, much more

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4 By chapter 193, passed April 9, appropriations were made for various purposes connected with Auburn prison, including $13,000 for existing debts, and $18,000 for new buildings.

favorable, may be produced by erecting furnaces for smelting and manufacturing the ore, on a scale sufficient for the employment of two or three times the present number of convicts. The additional expense of maintaining a larger number would be comparatively small. The labor of the convicts would be much more remunerative in the manufacture than the excavation of the ore. Other than financial considerations may be urged in favor of this policy.[5]

Complaints continue to be made of the employment of too large a share of the convict labor in mechanical occupations, which conflict with the interests of honest citizens engaged in similar pursuits.

This evil, unavoidable to a certain extent, should be diminished as far as practicable. A leading motive in the establishment of the Clinton Prison was to withdraw a large class of prisoners from mechanical employments. But that purpose has been only partially fulfilled. Aside from other inducements, I am of opinion that the management of all the prisons would be improved by transferring some of the convicts from Auburn and Sing Sing to Clinton. At Auburn the number of prisoners sometimes exceeds the number of cells. The increase of criminals consequent upon the growth of population and other causes, will soon produce the same result at Sing Sing. The evils produced by overcrowding the prisons beyond their regular capacity are too serious to be tolerated. It cannot be doubted that the future necessities of the State will require a third prison. After making so large an expenditure upon the establishment at Clinton, its abandonment cannot be seriously entertained, and I would recommend that proper measures be taken for erecting such works as are necessary to carry the original design into full effect.

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[5] Chapter 194, passed April 9, appropriated $13,000 for the current support of Clinton prison; $12,000 for debts, and $17,000 for the manufacture of iron. The same act authorized the state prison inspectors to purchase the Averill iron ore bed.

The number of convicts in the several State Prisons on the first of December last, was as follows:

Sing Sing	830
Auburn	771
Clinton	113
Total	1,714

The number pardoned from these prisons during the last year, was 104. The annual list of reprieves, commutations and pardons, will be transmitted in a special communication. In the exercise of the pardoning power, one of the most embarrassing and delicate prerogatives that can be confided to human discretion, I have endeavored to act upon correct views of justice, humanity and public policy. Error in the conviction, undue severity of punishment, loss of health, produced or aggravated by long confinement, and service rendered to the State by the discovery of accomplices, have been regarded as the only legitimate grounds for the indulgence of clemency. In the discharge of this difficult duty, I have been impressed with the importance of a careful revision of our criminal laws for the purpose of making the punishment of certain crimes more proportionate to the grade of offence. Some of the provisions of our statutes are productive of inequalities which violate the sense of justice, and this evil is aggravated by a want of uniformity in the action of the local courts.

The amount fixed by the present law to distinguish grand from petit larceny, should be increased, and in certain cases the minimum term of imprisonment in the State Prison, which is now established at two years, ought to be reduced to one year.

An extraordinary number of capital offences, and a considerable increase in other crimes, have made the last a memorable year in the judicial annals of the State. This

melancholy fact must be attributed in a large degree to the prevalence of intemperance in our cities and larger towns — a growing evil which has become the most prolific source of wretchedness, pauperism, and crime.

During the year, seventeen persons were found guilty of murder and three of arson in the first degree; and several more are in prison awaiting trial. Of the number thus convicted, six have been executed; the sentences of five have been commuted to imprisonment for life, and nine await the time fixed or to be fixed for their execution. The duty of the Executive in relation to crimes punishable with death is highly responsible and painful. In most cases strong appeals are made by the friends and relatives of the convict for an exercise of the pardoning power; and if this effort proves unsuccessful, the courts are resorted to for relief, frequently upon points having little connection with the guilt or innocence of the accused, but involving merely some question of form or regularity in the proceedings. In prosecutions where human life is at stake, the greatest care should be observed, to see not only that the conviction is intrinsically just, but in accordance with established principles of law.

My reflections upon the subject have produced a belief that the ends of justice would be promoted by submitting every capital conviction to a review by the judges of the Supreme Court, before fixing a day for the execution of the sentence. It should be made the duty of the presiding judge of the Oyer and Terminer, in which the trial is held, to report the evidence and all the proceedings to the Supreme Court of the district, and that tribunal should be required, at its next general term, to examine the case and decide upon the legality of the conviction. If they confirm the sentence, they should fix a day for its execution and report their decision to the Executive. Such a review as is now suggested, would secure to every convict, however friendless, the substantial benefits of an appeal in which

his rights would receive deliberate and impartial consideration; it would relieve the pardoning power from an oppressive portion of its responsibility; and I cannot doubt that in many cases which give rise to differences of opinion in the community, a judicial proceeding of the character proposed would strengthen public confidence in the justice of the sentence, and induce more general acquiescence in the propriety of its execution.

It affords me much satisfaction to refer to the good management and excellent condition of the Albany Penitentiary, in which the convicts for minor offences in this and several adjacent counties are imprisoned. A personal examination of the establishment enables me to speak of its administration, and especially of the improvement in discipline and economy, in terms of sincere approbation.

It appears from the information furnished by the Commissioners of Emigration, that nearly 300,000 emigrants were landed at the port of New York during the last year. The most gratifying success has attended the efforts of the board to provide for the wants and better the condition of the destitute strangers who are coming amongst us in such extraordinary numbers. More than 20,000 of the sick and helpless were received during the year into the institutions under the charge of the Commissioners; employment for nearly an equal number was obtained through their friendly agency; many thousands were forwarded to the interior at the expense of the emigrant fund; and effectual measures were employed to protect the whole body of emigrants from those nefarious frauds which had been practised for years with comparative impunity. By the establishment of the present system, and its faithful administration, an important service has been rendered to the public interest and to the cause of humanity. The suggestions of the Commissioners in favor of some further legislation to promote the objects of their labors are commended to your favorable attention.

For the present condition of our militia establishment I would refer you to the annual report of the Adjutant General, the Inspector General, and the Commissary General. Satisfactory progress has been made in carrying out the act of the last Legislature, and its provisions have proved highly beneficial. In pursuance of the new law, I appointed an Inspector General, whose active exertions have been of much utility in promoting an efficient organization and infusing a healthful military spirit. Many brigade and regimental districts, which had failed to comply with the law of 1847, have been successfully organized, and numerous volunteer companies have been formed, which promise to reflect credit upon the service. The importance of maintaining a well trained militia force ought not to be underestimated, and it is gratifying to perceive that a growing interest in the subject is manifested in all sections of the State.

The operations of the banks and the state of the currency will be fully exhibited in the annual report of the Superintendent of the Banking Department. The circulating medium of the State appears to be in a sound condition. Two recent failures of banks of circulation serve to demonstrate the advantages of the general banking law, instead of impairing our confidence in its safety. The securities deposited in the Bank Department, under the present restrictions, must constitute the best reliance for the protection of the bill holder. In all our legislation, the free banking system is to be regarded as permanently established. In the course of twelve years experience, many improvements have been made in its practical operation, and some further modifications will undoubtedly be found conducive to the public security.

The frequent occurrence of railroad accidents renders it but too apparent that proper care for their prevention is not now exercised. A large proportion of these calamities might have been avoided by due care in the construc-

tion, management and service of the roads and their moving equipment. The obligation of the State Government to extend its protection to the lives of railroad passengers is imperative, and rests on high moral grounds. I would, therefore, invoke the Legislature to enact such laws as may, on mature consideration seem most proper and efficient for preventing the recurrence of these lamentable disasters.

The Legislature, at its late session, provided by law for the erection of a building for the better preservation of the State Library. That building is now under contract, and will be completed with all the dispatch which may be deemed consistent with the permanency and security of the edifice. Warned by the late destruction of the Congressional Library of the necessity of adopting every precaution against a similar calamity in our own case, I deem it proper to recommend to your special consideration the suggestions to be submitted in the report of the Trustees, in relation to the internal arrangement of the building, with a view to the greater security of the valuable collection to be deposited in it.[6]

The increase of corrupt practices in our elections has become a subject of general and just complaint. It is represented that in some localities, the suffrages of considerable numbers of voters have been openly purchased with money. We owe it to ourselves and to posterity, and to the free institutions which we have inherited, to crush this hateful evil in its infancy, before it attains sufficient growth to endanger our political system. The honest and independent exercise of the right of suffrage, is a vital principle in the theory of representative government. It is the only enduring foundation for a republic. Not only should the law punish every violation of this principle as

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[6] Chapter 102, passed March 25, made appropriations for the purpose of providing fire proof accommodations for the State library.

a crime against the integrity of the State; but any person concerned in giving or receiving any pecuniary consideration for a vote, should, upon challenge, be deprived of the privilege of voting. I submit the subject to your consideration, in the hope that additional remedies may be prescribed and enforced.[7]

It is now several years since suits were commenced by the Attorney General, under the direction of the Legislature, to test the validity of the title to certain manorial lands occupied by tenants holding perpetual leases. It is of great importance that these suits should be brought to a final decision as early as practicable. It is due to the rights of both parties. While the question is suspended in the courts, both landlord and tenant are in a state of uncertainty; the improvement of the country is retarded; voluntary arrangements for a change of the tenure are arrested; and the public mind is kept in a state of agitation most unfavorable to the peace of society and the regular administration of justice. Measures should be adopted to compel an early and definitive adjudication in the court of last resort.[8]

Complaints continue to be made of delays in the administration of justice in the city of New York. Some of the courts are overwhelmed with an accumulation of cases, notwithstanding the arduous and efficient efforts of the judges. It is believed that an increase of business in the commercial emporium will ultimately require an additional number of justices. The pressure upon some of the courts may be attributed in part to the chancery duties imposed upon the common law tribunals. The law should be so amended as to relieve the judges from the labor of tak-

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[7] The Legislature of 1853, by chapter 539, amended the bribery provisions of the revised statutes in several particulars, and also adopted a bribery amendment to the constitution.

[8] See 1848, note 9, for a decision sustaining the Van Rensselaer title, *ante*, p. 413.

ing testimony in equity proceedings; and I would recommend that authority be given to the courts to refer such cases, whenever, in their discretion, they shall deem the examination of witnesses before a referee compatible with the rights of parties.[9]

The statute in relation to the proof of wills and the administration of estates, needs such amendments as will expedite the discharge of debts against the estate of the deceased, in cases where the administration is suspended by a contest in respect to the probate of an alleged will; a litigation which often occupies many years before its final determination, and subjects creditors to serious embarrassment and injustice.

In my last annual communication, I deemed it my duty to recommend suitable legislation for encouraging the settlement of the unsold lands of the State; for a revision and condensation of our statutes; for defining the power of cities to contract debts; and for the punishment of embezzlement by public officers as a crime. Referring to the views then expressed, I would again invite your attention to these several topics.

Having now adverted to the more prominent questions of domestic policy which will engage your deliberations, it can hardly be deemed inappropriate briefly to consider the relations of the State to the Federal Union, in connection with those subjects of national legislation which most intimately affect our prosperity. Although your legislative powers are limited to the internal concerns of the State, and its welfare depends peculiarly upon the wise exercise

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9 By chapter 374, passed April 16, the chief judge of the Court of Appeals was authorized to appoint additional circuits in the first district, and assign judges thereto. The same act provided for the election of an additional justice of the supreme court in the first district. This increase was authorized by the constitution, article 6, section 4.

The act was sustained in People ex rel. Morris v. Edmonds (1853), 15 Barb. 529; but see *contra*, People ex rel. Mitchell v. Haws (1860), 32 Barb. 207.

of those powers, we cannot forget that some of our most cherished interests are involved in the action of the general government. The exclusive authority to levy duties upon imports and to regulate commerce has been delegated to Congress.[f] Unfortunately for the country, these important functions have not been exercised with that enlightened regard for the welfare of our citizens which they have a right to demand from a government deriving its existence and support from the people. The protection of our industry in those branches of production which are least able to withstand foreign competition, and the improvement of navigation on our lakes and rivers, both objects of the most vital importance to the public prosperity, have failed to receive the friendly attention of the federal government for some years past.

Under the ruinous operation of the revenue system of 1846, some of our most valuable manufacturing interests have been entirely prostrated, while the excessive importation of fabrics which we ought to produce at home, has created an enormous balance of trade against the country. The neglect of Congress to protect the commerce of our inland waters has caused a deplorable waste of life and property. The sentiments of this State ought to be distinctly announced on subjects of such paramount importance to its welfare; and the public opinion, which undoubtedly exists in favor of a liberal national policy, should make itself felt and respected. After surrendering to the federal authority the whole revenue power of the country, we cannot calmly consent that it should longer remain hostile or indifferent to the attainment of objects which the national compact was intended to secure, and which are called for by the most urgent considerations of policy and patriotism. It is a source of sincere satisfaction that the Executive branch of the government, actuated

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[f] U. S. Const. art. 1, § 8, clauses 1, 3.

by statesmanlike views and a patriotic desire to promote the general prosperity, has recommended to Congress the adoption of proper measures to remedy the evils so seriously felt and justly complained of.

It cannot be disguised that the legislation of Congress on measures of practical importance has been seriously impeded by the sectional collisions which have too long disturbed the repose of the country. The controverted questions arising from our late territorial acquisitions, having been settled, we may reasonably hope that a recurrence of similar difficulties will be avoided by steady perseverance in a wise, moderate and conservative policy. Let us also indulge the hope that with the removal of its most prominent cause, the spirit of sectional contention so pernicious to the national prosperity and so repugnant to the purposes of the federal compact, may speedily disappear from the political horizon. It is time that angry strife and unworthy jealousies between the northern and southern portions of the United States should be banished forever, and that our public councils be inspired once more by the sentiments of mutual confidence and attachment which animated the whole people in the struggle for independence and the formation of the Union. In the free exercise of the inherent and vital right of opinion and discussion, zeal should be tempered by toleration and forbearance, and a just regard for the constitutional rights of all sections of the country.

When we recur to the original design and the true theory of our federal system, every candid mind must acknowledge that there is no sufficient cause for keeping alive feelings of aversion and ill will between the members of a voluntary confederacy, whose firm and perpetual union forms the only sure foundation for the freedom and happiness of the American people, and for the hopes of liberty throughout the globe. On a calm survey of our political condition, we perceive that the federal authority was

created for purposes of a general and national character; for the conservation of common rights and the protection of interest in which all the states, however diversified their internal condition, have a joint and equal concern. The Constitution[s] having wisely left the states free to regulate their domestic affairs, the dissimilarity in their local institutions furnishes no just ground for mutual complaints and reproaches. These differences of social and municipal organization existed among the American colonies; they were produced by causes over which the founders of the Constitution had no control, and for which we, their descendants, cannot be deemed responsible. They were not sufficient to prevent Washington and his compeers from blending diverse interests by mutual concessions, and rearing the noblest edifice of free government which the world has seen.

Why then should they be permitted to embitter our councils, and weaken the political ties which constitute us one people? In the conduct of our national concerns, why should the progress of the country be retarded and its best interests be forgotten in vain disputes upon questions which each State must decide for itself, and over which we have no rightful control?

In my reflections upon this subject, I have not permitted myself to doubt that the spirit of disunion which no concessions can appease, and the fanaticism which sees evil continually and luxuriates in factious strife, will exhaust themselves in the madness of their manifestations, without seriously endangering the stability of our National institutions. I adhere to the conviction expressed in my last annual communication, that the great body of the people, as well in our own State as in every portion of our widely extended confederacy, continue to cherish an ardent attachment to the Union, that they desire to see the Con-

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[s] U. S. Const. 9th, 10th am.

stitution administered in a spirit of moderation and equal justice towards the rights of all sections; and that they will "indignantly frown upon every attempt to alienate any portion of our country from the rest, or to enfeeble the sacred ties which now link together the various parts."

The position and ultimate destiny of the African race on this continent is a subject eminently worthy to engage the attention of the humane and benevolent. The highest motives of patriotism and religion prompt us to co-operate in all rational measures intended to improve their unfortunate condition. But it is of the first importance in considering a question of this magnitude, surrounded by so many embarrassments that we should discard the passions and prejudices which are so ready to usurp the place of common sense; that the spirit of faction should yield to the higher sentiments of a pure and generous philanthropy, and that in this, as in the ordinary concerns of life, we seek for a plan having some practical connection with the object of our efforts. We are to inquire, not merely what may be desirable, but, in view of the realities around us, how much is attainable, and what course of action will produce the most beneficial results? The negro race was brought to this continent almost as early as the white, and continued to be imported for nearly two hundred years. It is one of the most revolting features in the world's history, that during this entire period the most of the civilized nations participated in the slave trade. All of the thirteen colonies tolerated slavery within their borders.

The people of this State have furnished conclusive proofs of their aversion to slavery, and of their abiding conviction that it is a moral and political evil, by abolishing it at home, and by their uniform opposition to its extension over free territory acquired by the arms and treasure of the nation.

In the southern States of the Union where the slaves form so large a part of the population, we cannot expect

that the institution will disappear in a day or a generation. It has become too deeply rooted and too closely interwoven with social and pecuniary interests to yield to sudden or violent measures of reform. The progress of amelioration must, in the nature of things, be gradual. It must be left to the voluntary action of the people more immediately concerned, experience having shown that we have more to hope from their own inherent sense of justice and policy, than from any interference that may be proposed by misdirected philanthropy, operating at a great distance from its object.

The anomalous position of the free colored population, undoubtedly forms one of the most serious obstacles to the gradual liberation of the slaves. We cannot close our eyes to the fact, that although the free people of color enjoy a certain degree of liberty, they are commonly treated, both in the free and slave States, as an inferior race, and deprived of the social and political rights without which freedom is but an empty name. Even in our own State they are excluded from the most essential privileges of citizenship. Debarred from all participation in public employments, rejected from most of the institutions of learning and religion, governed by laws which they have no share in framing, having been denied the right of suffrage by a vast popular majority, shut out from social intercourse, and condemned to a life of servility and drudgery, their condition amongst us is deplorable in the extreme. Any great improvement of their condition under circumstances so calculated to crush the spirit of manhood, seems morally impossible.

The blighting effect of the inferiority to which they are subjected, is seen in the fact, that while every other class has rapidly increased, the colored population of this State has dwindled from 50,027 in 1840 to 47,937 in 1850. A result so remarkable naturally excites apprehensions that the African, like the Indian race, cannot permanently co-

exist on the same soil with the whites, and that a separation is necessary to prevent their ultimate extinction. However unjust the pervading prejudice which affects the public sentiment toward the black race may appear, its existence and its unfavorable effect upon their welfare cannot be disputed. In several States, this antipathy is displayed in laws prohibiting negroes from coming within their borders. The people of Indiana adopted a restriction of that character last year by an extraordinary majority. It is evident that every scheme for the elevation of the African to a position of equality and full citizenship in our country, must prove delusive until pride and the sense of superiority shall have been extirpated from the human heart. The instincts of nature, too powerful to be counteracted by the refinements of abstract reasoning, proclaim that the two races must sooner or later be separated.

The American Colonization Society presents the only organized agency which has contributed to accelerate this separation or produce practical results beneficial to the African race. This association was formed many years ago by benevolent citizens in different sections of the country and has for its objects to rescue the free colored people of the United States from their social and political disadvantages, by placing them where they may enjoy the blessings of free government; to spread civilization and religion throughout the continent of Africa; to arrest and destroy slave trade, and to afford such owners as are willing to liberate their slaves an asylum for their reception. For the accomplishment of these noble designs, a colony, composed of free colored persons emigrating voluntarily from this country, has been established in Liberia, on the western coast of Africa. For years the enterprise encountered many obstacles, but these have been overcome by persevering efforts.

A careful examination has convinced me of the feasibility and immense advantages of the undertaking, and of

its pre-eminent claims upon our support. Under the auspices of the society, nearly 10,000 free colored persons have emigrated, many of them being slaves liberated on that condition. They have established a free republican government, and acquired by peaceful means a large extent of country, embracing 200,000 people, and abounding in the elements of agriculture and commercial prosperity. They have shown themselves competent to make their own laws and administer their affairs with regularity and justice. Industry prospers, schools and churches have been established, and the people of this infant colony, carrying with them the knowledge acquired in the scene of their former humiliation, are spreading christianity and civilization over a portion of the earth which has been sunk for ages in heathen barbarism.

The value of this consideration will be felt when it is remembered that the population of Africa is computed at 150,000,000, of whom a majority are in the most abject slavery. By the efforts of the new republic the slave trade has been suppressed along several hundred miles of coast, and the extension of the settlements will extirpate that detestable traffic. Thus we perceive that this great work of humanity may claim the double merit of redeeming another continent from degradation, while it improves the condition of our own. It needs no prophetic vision to foresee that one of the great designs of a mysterious Providence is to be fulfilled by restoring the oppressed sons of Africa to their native soil after centuries of bondage.

A cause so beneficent, identified with the lasting welfare of two of the great races of mankind, rises high above the party contests of the day, and appeals with resistless force to the justice and humanity of the whole American people. I hope to see it sustained by the liberal action of the national government, seconded by contributions from the several States. The employment of government steamers to transport colored emigrants from this country, would soon

obviate the necessity for a naval squadron on the coast of Africa, which is now maintained there by the United States at great expense and waste of life, for the suppression of the slave traffic.

It may be objected to the claims of the Colonization Society that its operations are gradual, and that the consummation of its purposes will require a long series of years. But we should reflect that it is impossible to remove an evil of such magnitude by any human means within the period allotted to a single generation. It is not to be denied that the efforts of the association have secured the liberation of several thousand slaves, a result more practical and beneficial than has been produced by any other organization. Until some portion of this continent or of the West India islands shall be set apart for the exclusive habitation of the colored race, African colonization must be regarded as the only effective auxiliary of voluntary emancipation.

A growing desire to emigrate is manifested by the black population, and many masters have declared their readiness to free their slaves when means can be found for their removal. Some of the States have made considerable appropriations to promote the object, and an increasing interest has been evinced by others. New York ought not be behind her neighbors in the performance of a duty so important to her own welfare, and so beneficial to a large portion of the human family, now held in a melancholy debasement. It is a work in which christians and patriots of all parties and in all sections can unite their efforts, without involving the country in political or geographical dissensions. I submit the whole subject to your enlightened consideration, in the firm belief that upon a full examination of its merits you will deem it in accordance with justice and policy, and an enlightened public sentiment, to manifest your approval of the cause by a liberal appropriation for the furtherance of its benevolent design.

Having fully determined to retire from office at the close of my term, I trust I may be permitted to avail myself of the present opportunity to renew to my fellow citizens an expression of my profound gratitude for the honors conferred upon me by their confidence, assuring them of my continual aspirations for the advancement of my native State in virtue, prosperity and happiness.

WASHINGTON HUNT.

Albany, January 6, 1852.

SPECIAL MESSAGES.

January 12. To the Assembly: Transmitting the annual reports of the Commissary General, Adjutant General and Inspector General.

January 12. To the Assembly:

EXECUTIVE DEPARTMENT,
ALBANY, *January* 12, 1852.

"In compliance with a request from the authorities of Philadelphia, I transmit a copy of certain resolutions adopted by the select and common councils of that city, in favor of erecting in the grove belonging to the hall in which the National Independence was declared, one or more monuments commemorative respectively, of the States, and of the men, parties to that glorious event; and requesting the Legislatures in each of the original thirteen States, to appoint two delegates to assemble in Independence Hall, on the 4th day of July, 1852, to deliberate upon a plan of carrying the proposition into effect.*

WASHINGTON HUNT."

January 15. To the Assembly: Transmitting a statement of the reprieves, commutations and pardons during the year 1851.

* See Governor Seymour's special message on this subject *post*, p. 681.

March 20. To the Assembly: Transmitting resolutions adopted by the Legislature of Pennsylvania in favor of the establishment of a navy yard depot and dry dock on the lake frontier by the National Government.

March 22. To the Assembly: Transmitting the report of Benjamin P. Johnson, agent of the State at the World's Fair in London in 1851.

March 31. To the Senate:

Veto of a bill entitled "An act authorizing county judges to exchange with each other in holding county courts."

"The bill conflicts, as it seems to me, with the fourteenth section of article six of the Constitution. That section provides 'that there shall be elected in each of the counties of this State, except the city and county of New York, one county judge, who shall hold his office for four years.' These words clearly imply, that the county judge is to be elected in the county and for the county; it is not perceived how the Legislature can designate or appoint any other person than the one so elected, to perform the duties of the county judge, either permanently or temporarily; that the person designated is a judge of some other court or county, cannot affect the constitutional question. As the office of county judge in any one county is an elective office by the people of that county, it cannot be within the legislative competency to confer the powers of the office upon any other person. His jurisdiction is necessarily confined to his county, and he cannot by virtue of his election perform any official act out of its limits. It has been held by the supreme court (2 Denio's Reports, 272[h]) that a law authorizing the appointment of a person to perform the duties of an officer made elective, by the people, by the Constitution, was a violation of that instrument; and this judgment was affirmed by the court for the correction of

[h] Warner v. People.

errors with great unanimity. It is scarcely necessary to remark, that if the Legislature could not authorize such an appointment by others, it could not make it directly itself; but this bill in fact, gives to a county judge the power of appointing some other county judge to perform his duties.

The same fourteenth section, of the sixth article of the Constitution, after providing for the election of a county judge in each county, declares "he shall hold the county court." Upon the well known principle that the conferring a public authority upon one officer, is necessarily an exclusion of all others, this provision becomes restrictive, and forbids the holding the county court by any other person or officer, except as provided by the Constitution. The fifteenth section of the same article has made such provision, that on the application of the board of supervisors of a county, the Legislature may provide for the election of local officers to discharge the duties of county judge and surrogate, in case of their inability, or a vacancy in office. In the absence of any other provision on the subject, this is sufficient to show that the convention could not have contemplated the designation of any person by the Legislature or under its authority, to perform the duties of a county judge who was not elected for that purpose. An easy and sufficient remedy being thus provided by the Constitution for avoiding the inconveniences anticipated by the bill before me, there can be no reason for trenching upon the very distinct enactments of that instrument. The judiciary act of 1847, (section 31, chapter 470) provides, that whenever a cause or matter shall be pending in any county court, in which the judge of such court shall have been attorney, solicitor, or counsel, or shall be interested, on his making and filing a certificate of the fact, jurisdiction of such cause or matter shall be vested in the supreme court. If the provision here referred to is not deemed sufficient, I would recommend further legislation to facilitate the removal of suits from the county court to the supreme court, in such cases.

Entertaining the constitutional objections above expressed, I deem it my duty to return the bill to the Senate for re-consideration."

The bill was not passed over the veto. The judiciary article of 1869, section 15, expressly conferred authority on the county judge to hold court in another county, and this power was continued by the constitution of 1894, article six, section 14.

April 8. To the Legislature:

"FELLOW CITIZENS.—It becomes my duty to invite your attention to the unforeseen obstacles that have been interposed to prevent the completion of the unfinished canals of this State. At the commencement of the present session it was confidently believed that no more difficulties would be encountered in prosecuting the several improvements provided for by the last Legislature. The canal law had received the general sanction of the people; both parties stood pledged to sustain it, and on all hands it was regarded as a settled question.

In the election of a new Canal Board, every member chosen, unless known as an original supporter of the measure, had received the popular suffrages upon a public pledge supposed to be binding in honor and morality to support the law and co-operate in its execution.

Some important steps had been taken towards carrying out the provisions of the act. Canal revenue certificates to the amount of $1,500,000 were issued before the commencement of the present year; and a loan of $200,000 was obtained under the act providing for the enlargement of the Oswego canal. Late in December, contracts were awarded and entered into by the Canal Commissioners, the State Engineer and Surveyor, and the Division Engineers, for the entire work of completing the Black River and Genesee Valley canals, and the enlargement of the Erie and Oswego canals, at an aggregate cost falling below the

official estimates of the engineers. In view of all these antecedents, I regarded the policy of the State as fixed and established, and deemed it a cause for profound congratulation, in my annual message to the Legislature, that our canal improvements had ceased to be a subject of political controversy.

In the present posture of affairs, I do not desire to revive former discussions, nor can it be deemed necessary to enlarge upon the considerations which governed the action of the last Legislature. It cannot be disguised, however, that the reasons which influenced your predecessors remain in full force, strengthened by another year's experience, and by the additional weight which results from an existing law, sanctioned by emphatic expressions of popular approval. The necessity for a more capacious channel to accommodate and secure the western trade has long been felt and acknowledged. Seventeen years have passed away since the Legislature decided to enter upon the enlargement of the Erie canal. After various alterations of policy, the completion of the undertaking was provided for by the new Constitution, by setting apart the surplus canal revenues for that purpose.[1] When sixteen millions of dollars had been expended upon the enlargement, it became necessary to determine whether the consummation of the work should be deferred for a long series of years, or expedited by anticipating the surplus revenues which the Constitution had pledged to its accomplishment. It was demonstrated that a system of small annual expenditures involved an unnecessary and injurious delay; a considerable increase in the actual cost of the work; a heavy loss of interest on the money already expended, inasmuch as the principal advantages of the improvement could not be realized until the entire channel is completed; and that during the tardy progress of the enlargement, our

[1] Const. 1846, art. 7, § 3.

inability to cheapen sufficiently the cost of transportation, would force a large amount of western business into other channels, to the prejudice of all our financial and commercial interests. On the other hand it was perceived that these evils would be obviated, and the desired advantages attained by a more vigorous prosecution of the undertaking.

While the importance and expediency of expediting the enlargement were generally conceded, the same unanimity of sentiment did not exist in regard to the mode to be adopted for securing the object. Differences of opinion were manifested in relation to the power of the State to obtain the necessary funds, by an issue of revenue certificates intended to operate as a transfer of the future surplus revenues, without recourse to the State in case of their insufficiency. It was shown to the satisfaction of a majority of minds, that this mode of proceeding was in harmony with the provisions and purposes of the Constitution. The competency of the Legislature to anticipate the surplus revenues in the manner proposed, was sustained by the opinions of our most eminent jurists, including the late chief justice of our highest judicial tribunal. After the fullest discussion and examination, the exercise of this power was deliberately resolved upon by the Legislature and confirmed by the people.

The question having been thus determined by the passage of the law and the subsequent proceedings in connection with it, it seemed reasonable to presume that no further efforts would be made to defeat or retard its execution. But this impression has proved to be erroneous. After the award of the contracts, a serious question was presented in respect to the authority of the letting board to make final and valid contracts without first submitting them to the Canal Board for approval.

It is not within my province to pronounce an opinion upon the extent of the powers vested in the subordinate

board by the resolution under which they acted. If it was necessary to the validity of the contracts that they should be reviewed and acted upon by the Canal Board, a prompt discharge of that duty would have protected the State and its citizens from unnecessary embarrassment.

Unfortunately, no practical measures have been taken by the present Canal Board towards removing the difficulties referred to; and paralyzed by doubts concerning the precise extent of its authority on some points, it seems to have shunned the exercise of every power which had become necessary to the progress of the work. While the Canal Board and the Commissioners of the Canal Fund renounced all responsibility in respect to their duties under the law, it cannot be deemed surprising that the Auditor of the Canal Department should distrust his authority to recognize the contracts, or to draw warrants for work performed in pursuance of their conditions. Yielding to the doubts produced by the non-action of his immediate official superiors, the Auditor has refused to honor the drafts of the Canal Commissioners, and several of them have been protested. It appears that proceedings have been commenced against that officer to compel payment of a draft thus refused and protested; that the supreme court has granted an order for a peremptory mandamus; and that the whole case has been carried to the court of appeals for a final decision. It is also understood that the questions presented will be argued and disposed of at the present term of the appellate court; and that its decision will extend not only to the power of the letting board to award and execute the contracts, but to the constitutional validity of the law itself.

You cannot fail to appreciate the grave importance of this proceeding, and the magnitude of the interests to be affected by its adjudication. The great undertaking upon which the State has entered, and which was supposed to rest upon the deliberate approval of the people and their

representatives, must now depend upon the action of the judiciary. Novel and anomalous as it may appear, the question of enlarging the Erie canal, a measure demanded by so many considerations of public interest and policy, and so repeatedly sanctioned by an enlightened public sentiment, has assumed the form of a law suit; and the capacity of the State to proceed in the work it has commenced, is reduced to a question of critical phraseology and technical construction. Whether the law and the Constitution shall be interpreted, according to the common sense and reason of mankind, and allowed to operate beneficially to the public welfare, or shall be thwarted by the artificial refinements of legal subtlety and abstraction, will now be determined by the court of last resort.

Before that elevated tribunal, composed of judges whose capacity, impartiality and independence, inspire the highest public confidence, we may anticipate the result without apprehension. The language of the law to be submitted to their consideration is plain and distinct. It declares in express terms that the revenue certificates authorized by it ' shall in no event be so construed as to create any debt or liability against the State or the people thereof, within the meaning of section twelve, article seven, of the Constitution.' Before the act can be so construed as to create the obligation which it thus explicitly disavows, we must reverse the ordinary meaning of words, and defy the clearest principles of interpretation. Such a conclusion would, of course, over-ride the deliberate and well considered action of the Legislative department. It would be alike repugnant to the public judgment, and disastrous to the vital and cherished interests of the State. An abiding confidence in the wisdom and firmness of the judiciary, dispels all apprehensions of a result so calamitous in its consequences.

Constitutional and legal provisions intended for the advancement of useful and beneficent measures, have always

been liberally interpreted in favor of their objects. After adopting a measure, deemed eminently wise and judicious for completing the public works from the means which the Constitution has appropriated to that object, and after the progress which has been made in the undertaking, we cannot abandon the law and the objects it was intended to ensure, without renouncing our commercial supremacy, and producing a train of evils which no patriotic citizen could contemplate with composure. It is due to your predecessors, that appropriate measures should be taken to vindicate their opinions and maintain the rightful action of the lawmaking power, whenever the subject is presented for judicial consideration.

In contemplation of the momentous interests involved in the final decision of the case, I deem it respectful to the court and befitting the importance of the occasion, that able and eminent counsel should be engaged to appear in behalf of the State, to defend the constitutionality of the canal law. Ample authority is vested in the Executive to 'employ such counsel as he may deem proper to assist the Attorney General in any suit prosecuted or defended by him in behalf of this State.' But that officer has not been connected with the present proceeding, and in the event of his omission to appear and sustain the law, the provision referred to does not sufficiently meet the exigency of the case. I consider it my duty, therefore, to recommend the immediate passage of an act authorizing the appointment of such special counsel as may be deemed advisable to appear for the State in support of the law, and making provision for the payment of a reasonable compensation. The importance of securing an early decision by the court is obvious. It becomes indispensable to the efficient and successful prosecution of the work, that the questions which have been placed in issue should be finally determined, so that all doubts in respect to the rights of individuals and the duties of public officers, may be removed. It is hoped

that your action on the subject will be as prompt as the ordinary rules of legislation will permit.[10]

WASHINGTON HUNT."

Albany, April 8, 1852.

April 15. To the Senate:

Veto of a bill entitled "An act to incorporate the trustees of the German Missionary Church and Congregation of the city of Buffalo;" a bill entitled "An act to incorporate and continue the Presbyterian Society of Stephentown," and a bill entitled "An act to incorporate the American Geographical and Statistical Society."

"Several bills have been presented for my approval to which I cannot yield my assent without a disregard of constitutional principles which I deem paramount and controlling. The first section of article eight, of the Constitution, provides that 'corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where in the judgment of the Legislature the objects of the corporation cannot be attained under general laws.'

In order to give proper effect to this provision, general laws have been passed authorizing the formation of several classes of corporations which are regarded as favorable to the public welfare. For many years previous to the adoption of the new Constitution, a general law existed, which remains in force with liberal and comprehensive provisions authorizing the incorporation of religious societies. Most of our churches, of every denomination, have been organ-

[10] The case here referred to by the Governor was Newell v. People (1852), 7 N. Y. 9, which involved the constitutionality of the canal act of 1851, chapter 485, authorizing the issue of canal revenue certificates for $9,000,000 to raise funds for canal improvements. Chapter 215, passed April 12, 1852, authorized the Governor to employ counsel to represent the State on the argument of the Newell case then pending in the court of appeals. The case was decided May 11, 1852, and the decision was adverse to the State, holding unconstitutional the canal act of 1851. See 1851, note 1.

ized under the act of 1813, which confers upon religious societies complying with its conditions, all the powers and privileges that can be deemed requisite for perpetual succession, and a just administration of their temporal affairs. Long experience has shown, not only that the objects of church corporations can be attained under this general law, but that its operation is favorable to their increase, their vigor and prosperity. While giving special or exclusive privileges to none, it places all sects and denominations of worshippers upon a footing of legal equality, and confers upon all the benefits of a liberal and uniform system, harmonizing with the principles of religious liberty, which invigorate and strengthen our political institutions.

The limitations imposed by the Constitution upon the legislative power, in respect to the creation of bodies corporate by special charters, were the result of wise deliberation, and were intended for salutary ends. Among other important considerations which induced the convention to prescribe general laws, it was deemed desirable to discontinue the practice of creating a multiplicity of corporations by partial and unequal enactments, infinitely varying in character according to the peculiar views or objects of applicants for special immunities. Another object sought to be accomplished by the change of policy introduced by the new Constitution, was the relief of the legislature from the constant and numerous applications for charters which experience had shown to be unfavorable to wise and matured legislation on subjects of common concern, involving the more general interests of the community.

Notwithstanding the adoption of general laws to facilitate the formation of corporations for charitable, benevolent, religious, missionary, scientific and literary objects, for banking, for roads, bridges, manufactures, and other purposes connected with the material and social progress of the State, numerous applications continue to be made to the legislature at every session, for special franchises to

attain the objects which have been so fully provided for by liberal enactments, framed in accordance with the design and spirit of the Constitution. A growing tendency to yield to solicitations of this character, and to grant particular acts for the attainment of purposes already provided for by general laws, is but too apparent. It becomes our imperative duty to recur to the principles so carefully established by the organic law, and to adhere to them with watchful fidelity.

I now return to the Senate, in which they originated, two bills for the incorporation of religious societies, entitled 'An act to incorporate the trustees of the German Missionary church and congregation of the city of Buffalo,' and 'An act to incorporate and continue the Presbyterian society of Stephentown.'

The objects proposed by these charters are not only meritorious, but in the highest degree laudable and worthy of encouragement. If it were necessary for accomplishing the purposes in view, or if it were compatible with the constitutional prohibition which we are bound to observe, they would receive my prompt and cheerful approval. But those purposes can be attained by a simple compliance with the general law above referred to, while in my judgment, these special acts are in conflict with the constitutional provision which must control legislative action on this subject.

I return also to the Senate a bill entitled 'An act to incorporate the American Geographical and Statistical society.' While I feel a sincere interest in the objects of this society, and would promote them by all just and constitutional means, I conceive that the bill in question is liable to the general objections which have been already advanced. The objects proposed are of a scientific character, and may be readily secured under the general law of 1848, 'for the incorporation of benevolent, charitable, scientific and missionary societies.'"

The bills were not passed over the veto.

April 15. To the Assembly:

Veto of a bill entitled "An act to extend the charter of the Unadilla Bridge Company."

"It appears to me to be inconsistent with the principle established by the Constitution, 'that corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws.'[1]

Among other acts of former Legislatures, intended to give full and legitimate effect to this constitutional provision, a general law was passed in 1848, to provide for the incorporation of bridge companies; the 21st section of said act, provides that any existing corporation having for its object the construction and maintenance of any bridge whose charter shall expire, may be continued as a corporation by complying with the provisions of the act so far as the same are applicable, on obtaining the consent of the supervisors of the county in which the bridge is situated. The enactment of the general law to which reference has been made, must, in my opinion, be regarded as a legislative declaration, that this class of corporations can attain their objects under a general act; and it follows, that the Legislature has not the power to create a corporation by special act for effecting the same purpose; that particular cases may arise to justify a departure from this general rule, ought, perhaps, to be conceded. In some instances it has been deemed necessary to grant a special act to a bridge company, conferring the power, which is withheld by the general law, to take and appropriate private property for the purposes of the corporation. But in the case under consideration, it cannot be contended that any franchise or privilege, necessary to the maintenance and enjoyment

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[1] Const. 1846, art. 8, § 1.

of the corporate property, is conferred by the charter, which may not be acquired by a compliance with the conditions of the general act of 1848.

The question arises, whether a special act extending the duration of an existing charter, is consistent with the spirit and design of the constitutional provision which prohibits the Legislature from creating by special charter, a corporation for the attainment of the same or similar objects. On this point I have adopted the views submitted to the Legislature of 1850, in an analogous case, by my immediate predecessor in office. He objected to the passage of an act of the same character, on the ground that the reviving or continuing of a charter beyond its limitation, was equivalent to the creation of a new corporation.* The charter of the Unadilla Bridge Company will expire in 1854. If they desire to continue the exercise of their corporate privileges for an additional term of years, it appears to me that they should comply with the general law which has made ample and convenient provision for such cases."

The bill was not passed over the veto.

April 16. To the Assembly:

Veto of a bill entitled "An act to incorporate the trustees of the fund for aged and infirm clergymen of the Protestant Episcopal Church in the diocese of New York."

"It is with much reluctance that I withhold my signature from the bill.

Regarding, as I do, the objects which the act is intended to promote, with sincere and friendly interest, and desiring to see the generous aims of the church carried into effect, the bill would receive my cordial sanction if I were not restrained by a firm belief that its passage would conflict with

* See the veto by Governor Fish of a bill to extend the charter of the Schoharie Central Bridge Co., *ante*, p. 513.

the fundamental law of the State. I have found it necessary, on several occasions, to communicate to the Legislature my views of the restriction upon the legislative power established by the constitutional direction that corporations shall not be created by special act 'except for municipal purposes, and in cases where in the judgment of the Legislature the objects of the corporation cannot be attained under general laws.'[k] It is perfectly evident that the objects contemplated by this special act may be attained by complying with the provisions of the general law passed in 1848, for the incorporation of benevolent, charitable, scientific and missionary societies.

If I am correct in this conclusion, it follows that the Legislature cannot create a corporation by special act for the accomplishment of the same charitable and benevolent purposes. In a constitutional sense, the question is not changed by the fact that the bill under consideration provides a different mode for the election and succession of trustees from that prescribed by the general law. If such a variation is admitted to be sufficient to justify the Legislature in granting a special act of incorporation, the constitutional prohibition referred to would soon become practically inoperative. One of the objects of having a general provision to govern all cases of the same character, in the formation of corporate bodies, would be entirely defeated by making a change in the mode of organization, the ground for special legislation.

Upon mature reflection, I am of opinion that a corporation with ample powers for the management and investment of the fund for aged and infirm clergymen may be created under the law of 1848, and that no further act of legislation is necessary for that purpose."

The bill was not passed over the veto.

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[k] Const. 1846, art. 8, § 1.

April 16. To the Assembly:

Veto of a bill entitled "An act to incorporate the New York Exporting Company for the Mining and Exportation of the mineral phosphate of lime, copper and other ores."

"A sense of constitutional obligation constrains me to return to the House of Assembly without my approval the bill. At this late hour of your session, it would be impracticable for me to enter upon a discussion of the principles which govern my conclusions, in respect to the power of the Legislature to grant special charters. I must refer to the views, which I have deemed it my duty to submit to the Legislature in several cases of a similar character. All the objects proposed by the bill under consideration, may be conveniently attained under the general law of 1848, to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes, and I am of opinion, that a special charter for the attainment of the same purposes would be inconsistent with the provisions of the Constitution on this subject.'"[1]

The bill was not passed over the veto.

April 16. The Legislature adjourned without day.

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[1] Const. 1846, art. 8, § 1.

HORATIO SEYMOUR, Governor.

ANNUAL MESSAGE.

To the Senate and Assembly:

FELLOW CITIZENS.— Charged with administering the affairs of a State unequalled by any in the Union in population, wealth, and commercial interests, we have reason to distrust our own ability in the performance of the duties imposed upon us, and to implore the continued direction of that Providence which has hitherto guided and blessed the people of this State and Nation.

In reviewing the events of the year, we find that the interests of religion and learning have been promoted, the efforts of industry rewarded, our mechanics profitably employed; and in the various departments of agriculture, trade and commerce, an unusual degree of prosperity has prevailed. Although some branches of manufactures have failed to yield remunerative returns, we have reason to believe that an increasing demand for their productions will soon place them in a prosperous and healthful condition.

In the midst of the enjoyment of freedom, peace, and prosperity, we have been aroused to a sense of the uncertainty of human life and happiness, by the startling appearance in some portions of our State, of a mysterious pestilence. We have also been impressed with the fleeting character of earthly pursuits and honors, by the death of two eminent statesmen of our country. While differences of opinion are entertained, as to the correctness of their political views, it is gratifying that all classes of our citizens have united in manifesting their respect for the services,

Horatio Seymour

abilities and patriotism, of the illustrious men whose deaths are regarded as national misfortunes.[a]

The numerous charitable and benevolent institutions of the State, designed to relieve the subjects of bodily and mental affliction, are successfully fulfilling the objects for which they were established. Their liberal support and endowment, are proper and becoming public expressions of gratitude, for the bestowment upon our people, of abundance, peace and prosperity.

The number of patients in the State Asylum at Utica was:

	Males.	Females.	Total.
At the commencement of the year.	220	215	435
Admitted during the year.....	200	190	390
Total number treated.....	420	405	825

There have been discharged during the year:

	Males.	Females.	Total.
Recovered.....	92	64	156
Much improved.....	7	4	11
Improved.....	21	21	42
Unimproved.....	63	89	152
Died.....	22	17	39
	205	195	400

I have received the following statement in reference to the Lunatic Asylum on Blackwell's Island:

Remaining in the Asylum on the 1st of January, 1852..	517
Admitted from 1st January to 18th December, 1852...	488
	1005

[a] The Governor probably referred to Henry Clay who died June 29, and to Daniel Webster who died October 24, 1852.

Discharged during same period	341	
Died	128	
		469
Remaining December 18, 1852		536

Of those admitted, 99 were natives, and 389 foreigners.
Of those discharged, 71 were natives, and 270 foreigners.
Of those who died, 29 were natives, and 99 foreigners.

It appears from the last annual message of my predecessor, that the number of insane persons in the State in 1850, as shown by the census of that year, was 2,506, of whom 1,106 were in Asylums, leaving 1400 to be supported in private families, or poor houses. I concur with him in suggesting that "further provision ought to be made for the relief of this unhappy class of our fellow beings."

I recommend the establishment of another asylum in the western part of the State.

The annual report of the trustees of the asylum for idiots, will be laid before you and will receive at your hands, I doubt not, that attention which the nature of this most benevolent charity must awaken in every intelligent mind.

The report confirms the hopes indulged in that of the preceding year, and satisfactorily shows that a class of human beings whose condition has generally been regarded as utterly hopeless, may, by proper training and culture, have their faculties so developed and improved as not only to relieve the anxiety of parents and friends, but also to enable them to engage in many occupations of life. The views of the trustees in respect to a moderate increase of the present accommodations, so as to admit of a larger number of pupils, and meet to some extent, the wants of this unfortunate class of inhabitants, seem so just and reasonable, and are so strongly enforced by the necessities of

the case, and the sympathies of our nature, that there can be no hesitation in carrying them into effect. A State by whose enlightened liberality the blind are educated for usefulness, and the insane provided with the best means of recovery, will not have completed the circle of its duties, until it has also made ample provision for reclaiming from darkness and desolation, those afflicted beings whose minds are closed against the light of knowledge and the sense of duty. It appears from the census of 1850, that the number of idiots in the State is equal to that of the insane.[1]

The number of pupils now in the New York Institution for the Instruction of the Deaf and Dumb, is two hundred and fifty-nine; of this number, one hundred and eighty-five are supported by the State. At the last session of the Legislature, the number of pupils thus supported, was increased thirty-two, adding one from each Senate District; making the whole number of State beneficiaries, one hundred and ninety-two. This institution continues to improve its system of instruction, to increase the value of its results, and to gain in the estimation of the public.[2]

The Institution for the Blind is successfully conducted. There are one hundred and fifty-three blind persons in the establishment; forty-two are employed in the workshops.

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1 Chapter 159, passed April 11, appropriated $20,000 to the asylum for idiots to be used in the purchase of land, and the erection of buildings thereon. The same act provided for the gratuitous maintenance in the asylum of sixty-four indigent idiots to be selected in equal numbers as near as might be from the several judicial districts. Additional inmates of the asylum might be received on terms to be established by the trustees. See 1851, note 6, *ante*, p. 555.

2 By chapter 115, passed April 5, the superintendent of common schools was authorized to continue "at the New York institution for the instruction of the deaf and dumb for a period not exceeding three years, for the purpose of pursuing a course of studies in the higher branches of learning, such pupils as may have completed the regular term of instruction, and who may be recommended by the directors of said institution;" but the number of state pupils could not be increased by such an extension of the course of study.

The introduction of new trades has been attended with great advantage to the inmates. The imposition of heavy assessments for grading the streets around the buildings of the institution, will require increased pecuniary aid from the Legislature.[3]

I have the following statement from the Commissioners of Emigration:

Whole number of aliens who arrived at the port of New York since May 5, 1847	1,336,960
No. arrived during this year up to Dec. 15th	295,272
" of persons admitted to Immigrant Refuge Hospital, Ward's Island, during the year, about	15,000
" of persons admitted to Marine Hospital, Staten Island	8,511
" of persons relieved in the various counties in the State and chargeable upon Commutation Fund, about	13,138
" of persons lodged and relieved temporarily in the city	18,394
" of persons for whom employment was found in the city, various parts of the State, and in other States, from the office in this city under the charge of Commissioners	14,612
" of persons forwarded to various places at expense of Commissioners	4,962
" of persons for whom special bonds have been demanded during the year, under the amended act of July, 1851, about	1,000

The Commissioners state that six years' experience has shown that the commutation of $1.50 for each person, is

[3] Chapter 615, passed July 21, appropriated $10,000 for assessments imposed on the New York Institution for the Blind, under city ordinances for sewers and street improvements.

sufficient to provide for the support and relief of the sick and helpless emigrant, but not enough to cover the expenses of procuring buildings for their reception. Since May, 1847, the State has been relieved from all expense of both sick and destitute from abroad. Large numbers of emigrants have been aided in getting employment here, or in going to other States where their labor was in greater demand. The Commission is indebted $170,000 for land and the erection of buildings.

The Commissioners recommend the addition of fifty cents to each commutation tax. This small increase will enable them to meet the expenses of their humane labors, and gradually to extinguish their debt.[4]

On the 30th of September, the public funds devoted to education amounted to the following sums:

The Common School Fund	$2,354,530.09
United States Deposit Fund	4,014,520.71
Literature Fund	272,880.12
	$6,641,930.92

These funds are securely and productively invested. In 1851, there were 11,537 school districts in the State.

The return for the years 1850 and 1851 show the condition and progress of our common school system.

The number of pupils attending the district schools was, in

	1850.	1851.
	726,281	862,507
The number attending private schools was	43,510	31,767
The number of schools for colored children was	105	

[4] The Legislature adopted the Governor's suggestion and by chapter 224, passed April 13, increased the commutation tax from $1.50 to $2.

	1850.	1851.
The number of pupils attending them was	5,305	4,416
Pupils instructed in the district schools during the whole year	7,037	8,765
Pupils instructed 10 months and less than 12	43,306	39,059
Pupils instructed 8 months and less than 10	59,962	68,742
Pupils instructed 6 months and less than 8	110,981	125,745
Pupils instructed 4 months and less than 6	170,005	178,330
Pupils instructed 2 months and less than 4	212,578	211,367
Pupils instructed less than 2 months	196,561	200,473
No. of volumes in school district libraries	1,507,077	1,570,131

	1850.	1851.
Amount paid for teachers' wages	$1,350,345.92	$1,681,316.00
Amount paid for district libraries	89,104.96	90,579.50

	1850.	1851.
The total amount expended for common schools was	$1,884,826.16	$2,249,814.02
Amount paid for building and repairing school houses, &c.	445,164.28	477,918.51

From these statistics it appears that about one quarter of the population of the State, are receiving in our district schools, the education that is to fit them to perform their

duties as citizens of our republic. Their characters and success in life will be greatly influenced by the kind of instruction they receive in these schools. We cannot estimate their importance too highly. They will exert a vast, perhaps a controlling influence upon the future prosperity of our country. Every consideration of prudence, patriotism and benevolence, demands that our common school system shall be so arranged and supported, that the employment of competent teachers may be secured. This can only be done by giving them just compensation for their services, and by a proper appreciation on the part of the Legislature and the public, of the dignity and value of their labors.

In preparing and training competent teachers for our schools, the State Normal School, and the departments for the education of the common school teachers in the academies, exercise an important influence. These are understood to be in a flourishing condition. The Normal School has more pupils than at any preceding period.[5]

An impression has heretofore prevailed, that our colleges and academies were institutions of learning, distinct from, if not in some degree antagonistic to, our district schools. This idea has been injurious by creating a popular prejudice against the former, while it has injured our common schools, by disconnecting them in public estimation from the pursuit of higher branches of learning. These different classes of schools are intimately connected, and all serve to give interest, value and dignity, to the cause of education.

Formerly we had but few colleges and academies, and the expense of attending them limited their advantages to

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[5] Chapter 402, passed June 17, was intended to provide for the instruction of common school teachers by establishing classes therefor in academies. The regents might designate one academy in each county, and prescribe a course of instruction therein for common school teachers. Not more than twenty-five could be thus instructed in any class, and the academy was entitled to receive $10 for each such pupil.

Union free schools were provided for by charter 433, passed June 18.

a small part of our population. They are now so numerous and so distributed, that they are accessible to all who desire to avail themselves of their advantages. They furnish teachers for our schools, and contribute largely to the general dissemination of the knowledge which enables our citizens of every age and condition in life, to become intelligent and successful in their respective pursuits. Science and learning are no longer elaborated for the benefit of a favored class; all valuable or interesting discoveries, are at once made public by the aid of schools, popular lectures, and the press.

The discovery of the scientific professor in an institution of learning, immediately becomes a part of the popular intelligence, and its advantages are universally diffused to aid the pursuits or increase the knowledge of our citizens. Enlightened policy and the interests of our common schools, demand the extension of a fair degree of legislative aid and encouragement to our colleges and academies. I recommend the adoption of some principle, in giving them assistance, which may prevent the practice of special legislation in favor of particular institutions.[6]

Numerous memorials have been presented to the Legislature for the establishment of schools or colleges for the promotion of agricultural, mechanical and natural science. I commend them to your favorable consideration.[7]

In a memorial presented to the Legislature, it is urged that "we have no institution of learning which is at once fully adapted to the present condition of science, and to the peculiar wants and character of our country. In this

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[6] The incorporation of colleges and academies was provided for by a general act, chapter 184, passed April 12.

[7] Chapter 193, passed April 12, incorporated the People's College for the purpose of "promoting literature, science, arts and agriculture." The New York Agricultural College was incorporated by chapter 247, passed April 15, and chapter 339, passed June 8, provided for the incorporation of agricultural and horticultural societies.

age, and in this country, where, more than in any other, the discovery of new truth in pure science is hardly announced before it is followed by its practical application; where the most abstract principles, and the most subtile elements of nature are immediately seized upon and applied to the commonest purposes of life; it is a matter of interest to all, and to none more than those engaged in agricultural and manufacturing employments, that we should have an institution where all the leading branches of science, in their highest and best estate, shall be represented by the ablest men in each department; and where instruction, in any and every branch, should be readily and cheaply afforded to the utmost extent that the knowledge of the day will admit." Such an institution would be very different, in its organization and objects, from any existing academy or college, and would in no degree supersede or conflict with them.

On the contrary, the project is advocated by many of their officers and professors. It would not be restricted to the education of youth, but would be resorted to by persons of different ages and conditions, for the purpose of obtaining such information as would be particularly useful to them in their several pursuits.

The anxiety manifested for the establishment of agricultural and mechanical colleges, adapted to the wants of our citizens engaged in those pursuits, shows the importance which is now attached to more thorough and perfect education. The inventive character of our people renders a knowledge of the sciences particularly valuable to them, while their elevation and improvement, intellectually and morally, becomes a political necessity, under our system of government. Some of the mechanics of our State have adopted measures for the establishment of a college, particularly designed for instruction in the practical sciences, upon principles which promise, by combining instruction with labor, to place its advantages within the reach of all

who desire to embrace them. An application will be made to you for a charter for an institution of this character, which will be entitled to your favorable consideration.

The Houses of Refuge at New York and Rochester, for the reformation of juvenile delinquents, are among our most interesting and valuable institutions. They have engaged the attention and received the care of enlightened and philanthropic individuals, who have properly appreciated the duty and importance of rescuing youthful offenders, from lives of degradation, misery and crime, and of making them virtuous and useful citizens. Every consideration of benevolence, as well as due regard for the safety of community and the prevention of crime, demand that these institutions should be liberally sustained. They will be obliged to apply to you for pecuniary aid and some legislative enactments. The high standing of their managers, and the motives that have induced them to assume the duties of their position, give assurance that any applications they may make to you, will be founded on a conviction of their propriety and necessity.[8]

The number of convicts in the prisons of the State, are as follows:

At Sing Sing	869
At Auburn	759
In Clinton County	155
Total	1,783

This is an increase of sixty-nine above the returns of last year. The number of female convicts is about eighty.

[8] Chapter 391, passed June 17, appropriated $50,000 for continuing the erection of buildings in process of construction for the Society for the Reformation of Juvenile Delinquents in the city of New York. By chapter 608, passed July 21, both houses of refuge were authorized to receive persons under sixteen years of age sentenced by United States courts.

The expense of maintaining the prisoners beyond the amount of their earnings, with the cost of indispensable improvements, will make the following appropriations necessary:

For the prison at Auburn.....	$14,000
Sing Sing	7,000
in Clinton County.....	27,000
	$48,000

The officers are confident that after the contemplated improvements are paid for, these establishments will sustain themselves. A detailed statement of the expenses and condition of these prisons will be given to you in the annual report of the inspectors.[9]

Great interest is felt by a large class of our mechanics in the success of the Clinton Prison. The character of the labor of the convicts at that place, conflicts less with the interests of some of our citizens, than the employments pursued in the other prisons. This establishment has heretofore been quite expensive to the State, and has been regarded as an unsuccessful experiment. The prisoners have been engaged in digging, separating, and preparing iron ores for the use of the neighboring furnaces. The depressed state of iron manufactures has lessened the demand for the ore, and the prices at which it is sold. The original plan of the prison contemplated the erection of the necessary works for making iron, and manufacturing it into some of its ruder forms. The Legislature, at its last session, made an appropriation for furnaces for smelting and manufacturing iron. These are not yet completed, but they will soon be finished at a cost not exceeding the amount appropriated.

[9] Chapter 613, passed July 21, contained various appropriations for the state prisons.

The inspector in charge of the prison is confident that when the establishment is completed according to its original design, it will give a revenue to the State beyond the cost of maintaining it.

I refer you to the last annual message of my predecessor, for his valuable suggestions respecting our prisons, the terms of imprisonment, and the review, by our Supreme Court, of the testimony and proceedings in cases of capital conviction. The prisons, penitentiaries, jails and houses of refuge in this State, contain thousands of misguided and criminal persons, whose due punishment for their offences, and whose improvement in morals and intelligence are matters of great interest and importance.

An accurate survey of our State and the establishment of permanent monuments, which will serve for the determination of magnetic variations, is very desirable for the purposes of science and for the prevention of litigation and other evils and embarrassments. Without these, it will become impossible to determine with accuracy the boundaries of farms, towns and counties, or to make topographical surveys of the whole or any parts of our State.

The value of land is becoming so great that more accuracy will be required hereafter in ascertaining true limits. Our present inaccurate system of surveying, causes frequent controversies and embarrassments, and we are destitute of any fixed monuments which will give certainty and permanency to boundaries and admeasurements. The subject should engage the early attention of the State government.

The agitations in relation to manorial titles in some sections of our State, have excited great interest among all classes of our citizens, and have been subjects of executive recommendation, and of legislative action. So far as they originated in a desire to determine the validity of titles, or equitably to extinguish tenures that had proved injurious to the communities in which they existed, they secured the sympathy of the citizens of this State. But violations

of law, in some instances causing the destruction of life and property, have excited a deep feeling against the perpetrators of such acts, which has been extended to many whose purposes were unobjectionable, and who regarded resistance to the laws of the State as alike injurious to their own interests, and to the principles of good government.

For the purpose of inducing the owners of large tracts of land to sell them to the occupants, and thus to obviate the evils attendant upon leasehold estates, the Legislature has abolished distress for rent and taxed the interest of land owners in leases. To prevent the recurrence of the evils experienced, the Constitution of the State forbids the leasing of agricultural lands for a term extending beyond twelve years.[b] The quarter sales reserved by some leases have been decided by our courts to be restraints upon alienation, and therefore void.[c]

The suits which were instituted by the State for the purpose of determining the validity of certain titles, have been decided in favor of the landlords, except in one instance, where the State recovered some vacant lands. In this case the court held that the lapse of time gave title to the landlord, to the lands which were occupied by tenants, and which comprise the principal and most valuable portion of the manor. The landlord has carried the cause to the Court of Appeals.

It appears from the message of Governor Young, at whose suggestion the suits were brought by the State, that they were instituted because "one of the fruitful sources of disquietude among the tenants, is the apprehension that the landlords have no title to the lands, and that, after paying rents and making improvements for a long series of years, they may, in virtue of a superior title to that under which they hold, be ejected from their possessions."

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[b] Const. 1846, art. 1, § 14.

[c] Const. 1846, art. 1, § 15.

When the purposes for which the suits are brought are effected, the continuance of litigation serves only to create agitation, to excite unfounded expectations and prevent adjustments between landlords and tenants, which are desirable in every respect.

Many arrangements have already been made between these parties, and the prosperous condition of the country, the abundance of money, and the high prices now commanded by the productions of the soil, are circumstances favorable to the tenants in securing the full ownership of their farms. It is understood that the prices originally asked by the landholders, have been, in many instances, very much reduced. The decision of the courts having established the validity of their titles and their legal rights, it is believed that the land owners will recognize the importance of selling their lands upon favorable terms and of extinguishing tenures injurious to the interests of the community and inconsistent with our political institutions. If any action is had by the Legislature upon the subject, it should not be of a character to excite unfounded expectations and in the end injure those it is apparently designed to serve. When the titles of the landlords are established, any assistance given to the tenants must be at the expense of the State, and not of the legal rights of any of its citizens.[10]

The changes in legal procedure contemplated by the Constitution (Art. 6, sec. 24,) have not been carried into complete effect. The commissioners appointed for that purpose, reported from time to time under the direction of the legislature. Their first report adopted in 1848, has been modified and amended by succeeding Legislatures, and has become the settled system of the State. The legal remedies by various special proceedings which occupy a considerable share of the attention of the courts were not

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[10] As to manorial titles see 1848, note 9, *ante*, p. 413. People v. Van Rensselaer (1853), 9 N. Y. 291.

included in the reports adopted; these are still administered under laws as they existed before the adoption of the present Constitution. The final report of the commissioners presented to the Legislature January 1, 1850, among other subjects, embraces these proceedings and a revision of these laws.

With no practical knowledge of the details of the reforms already enacted, and those proposed in the reports referred to, I am unable to express an opinion of their merits. But regarding the existing code of practice, as the established system by which remedial justice is to be hereafter administered, it seems due to consistency that such further legislation should take place as is necessary to provide that civil remedies, both by special proceedings, and by civil actions, should be prosecuted under a general method of procedure.

A considerable part of the jurisdiction of the courts, is exercised under statutes conferring powers upon the Chancellor and various officers of this court, and upon courts of common pleas which have been abolished by the new Constitution.[d] The Legislature has passed various laws to render the proceedings applicable to the courts as they now exist; but a revision and a more perfect adaptation of them to our present judicial system is desirable.

The enrolled militia of the State of New York numbers 289,306 men. Many uniformed companies, not only well equipped, but well drilled and disciplined, have been formed in our State. These companies are composed of intelligent and active men, who are interested in preserving the peace and good order of society. Without subjecting the State government to any expense, they constitute an important part of the executive power of the State. They number about 15,000 men, 5,800 of whom are in the city of New York. These companies are usually formed

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[d] Const. 1846, art. 14, § 8.

in large towns and cities, where popular disturbances and resistance to law are most likely to occur.

They serve to overawe turbulent or disorderly members of society, and constitute a powerful body, prepared at all times to aid the civil authorities. Their vigor, intelligence, and the interest they have, as respectable citizens, in upholding the law, together with the degree of discipline they have attained, render them efficient and reliable in all emergencies.[11]

The enlightened and liberal spirit of the age, no less than the interests of commerce, demands the establishment of a system of reciprocal trade with the adjoining British provinces. Their vast extent of coterminous boundary, the character of their productions, and the nature of their wants; their use of a common language with ourselves, and the similarity of habits and customs, render a free and unrestricted intercourse and commerce with their population, of great interest and importance. Our own State is particularly interested in the adoption, by the general government, of some measures calculated to effect this desirable result. It would increase the business of our canals, add to the prosperity of the towns in the northern and western sections of our State, and increase the commercial importance of the city of New York.

The striking success of American industry and skill at the London Exhibition and in the British waters, during the year 1851, naturally aroused a desire for the organization in this country of an Industrial Exhibition analogous to that which has conferred so much honor on England. The limitations of the powers of our National and State governments, prevented their more direct action, but a charter was granted by the Legislature at the session of 1852, forming an association designed to accomplish this

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11 A concurrent resolution was adopted, providing for the appointment of a commission to be composed of the Adjutant General and two other persons to be appointed by the Governor, to prepare a military code, which, however, was not to include the act relative to the first division.

enterprise. With the favor of the general administration, and the active aid of the city of New York, the Association is pursuing its task with energy, its managers appearing fully sensible of the high expectations excited by their undertaking. While the producers of Europe will avail themselves of so favorable an opportunity to bring their fabrics to the notice of the consumers of this country, the collection, on a national scale, of the products of American industry, must of itself, secure a result of such interest and practical value, as fully to repay the great labor which the work requires. The building, designed to receive the exhibition, now partly erected, promises to unite convenience and ample space with a high and novel character of architectural beauty; and may, if the success of the enterprise shall warrant its preservation, remain for similar uses through future years.[12]

The number of banks, banking associations, and individual bankers, doing business in this State, on the first days of December, 1851, and 1852, were as follows:

	1851.	1852.
Chartered banks	72	70
Banking associations	95	118
Individual bankers	77	89
	244	277

[12] The act of 1852, chapter 56, passed March 11, incorporated the "Association for the Exhibition of the Industry of all Nations." It was to continue in existence five years, and was authorized to acquire property and erect a building, at an expense not exceeding $200,000 for the purpose of establishing and conducting a world's fair. The act was amended in 1853, (chapter 19, passed February 28) by repealing the limitation on the amount to be expended, and by increasing the maximum of capital stock from $300,000 to $500,000.

Chapter 21, passed February 28, authorized the authorities of New York to provide for police supervision of the Crystal Palace then in process of erection in Reservoir Square.

The bills issued by the Banking Department to the free banks amount to $19,159,056, being an addition to the amount held by them on the 1st December, 1851, of $3,488,-052, and an increase of $7,978,381, within three years. The free banks have, withir the same time, about doubled in number.

The actual circulation of all the banks, as shown by their quarterly reports in September, 1851, amounted to.....	$27,254,458
1st December, 1852, to.....	38,790,985

The Superintendent of the Banking Department, in his annual report, will call the attention of the Legislature to the fact that many of the free banks are established merely to get bills for circulation. They evade the provisions of the laws requiring them to do business at some designated place, and circulate their notes through brokers in the commercial cities. They frequently allow their notes to be discredited for the purpose of buying them at large discounts, thereby subjecting the billholders to loss. The multiplication of banks of this description is attended with numerous evils, and, in times of pressure in the money market, will cause great embarrassments. Further legislative restraints are necessary to save the public from frauds and losses. In some instances, bills have been obtained upon insufficient security by fraudulent representations.

I have been furnished with the following abstract of some of the statistics of the railroads of the State of New York, taken from the returns made to the State Engineer, for the year ending September 30, 1852.

Twenty-seven corporations only have made returns. Three other corporations, which made returns last year, have not filed the annual reports required by law.

There have been filed in the office of the Secretary of State, articles of association for forty-one additional railroad corporations. Several of these roads are known to

have been completed, and upon others large expenditures have been made. The railroad corporations are by law required to file their annual reports with the State Engineer by the 1st day of December. None of them have complied with this provision, and the late date at which many of them were sent in, delays the State Engineer, and prevents him from complying with section 103 of the general railroad law, which requires him to arrange the information in a tabular form, and to report to the Legislature on the first day of its session.

The number of miles of road in use on the 27 railroads reported, is	1,797	miles
And adding the lengths of three roads not reported, as given last year, makes.....	2,027	do
This is an increase in the number of miles in use, over the number reported last year of..	297	do

The total cost of the 27 roads reported up to 30th Sept. 1852, is $82,812,160.63.

The total expenditure on all of the roads constructed and commenced in this State, is probably about one hundred millions of dollars.

The number of passengers carried in cars on twenty-one roads reported, is 7,061,909. And the number of miles traveled by the passengers is 332,847,667. The increase on 18 roads, over the preceding year, was, of passengers, 1,487,087, and of miles traveled, 92,858,860. The number of tons of freight carried over 21 roads reported, is 2,060,379. The increase over the preceding year on 17 of these roads, is, 821,101 tons.

The number of persons injured in life or limb on 26 roads reported, is 256; of whom were killed, 158. The increase over the preceding year, on 25 of these roads, is of persons killed, 59, and of persons injured, 44.

These railroads traverse almost every county in the State. There are no sections of its territory which have

not now cheap and convenient avenues to market, by means of lakes, rivers, canals, and railroads. The recent extension of the last named improvement, will rapidly increase the wealth and population of the State.

The Constitution of this State, which was adopted by a great majority of the popular vote, establishes a well defined and comprehensive financial system, designed to pay off the debt created for the purposes of internal improvements, and provide for the completion of our unfinished canals; and also to pay the General Fund debt of the State, and provide for the support of its government. To prevent the recurrence of the evils of indebtedness, it forbids the creation of any debt beyond one million of dollars, except to repel invasion, suppress insurrection, or defend the State in war; unless authorized on a direct appeal to the popular will; in the manner directed by the Constitution. These important provisions have recently been topics of earnest discussion, in popular assemblages, in the halls of the Legislature, and before the judicial tribunals.*

The finances of the State, and the condition of the public works, are at this time subjects of great interest; I therefore deem it my duty to recur to the reasons which led to the adoption of the financial provisions of the Constitution, to give my views of the condition of our public works, and to make such recommendations with regard to them as I think best calculated to effect their completion, and make them the channels of commerce between the great and productive regions of the West, and the markets of the East. The Constitutional Convention caused statements to be prepared showing the financial condition of the State; and ascertained that the debts contracted for the canals, amounted to $17,516,119.57, and that a large additional sum was required to complete them; that the debt incurred for other purposes, was $5,885,549.24, and that the revenues

* Const. 1846, art. 7.

of the State were insufficient to pay the expenses of the government, so that this debt was constantly increasing.

Of the general debt of the State $3,000,000 had been incurred for the benefit of the New York and Erie railroad.

To extinguish the canal debt the 1st section of the 7th article of the Constitution directs, that after paying the expenses of repairs, &c., there shall be set apart from the revenues of the canals, in each fiscal year, $1,300,000, until the first of June, 1855, and, from that time, the sum of $1,700,000, in each fiscal year, as a sinking fund to pay the interest and redeem the principal of the canal debt, as it existed on the first day of June, 1846.

To pay the General Fund debt of the State, the 2d section of the 7th article provides, that in each fiscal year, after complying with the 1st section, there shall be set apart from the canal revenues, the sum of $350,000 as a sinking fund to pay the interest and redeem the principal of that debt. After the canal debt is paid, the sum to be set apart for the payment of the General Fund debt, in each fiscal year, is to be increased to $1,500,000.

To aid in paying the expenses of Government, the third section of the seventh article directs, that there shall be paid out of the surplus revenues of the canals for that purpose, a sum not exceeding $200,000, in each year, after complying with the provisions of the first and second sections.

To secure the completion of our unfinished public works, it requires that the remainder of the surplus revenues of the canals shall, in each fiscal year, be applied to the Erie Canal enlargement, and the Genesee Valley and Black River canals, until they are completed.

When the purposes of the Constitution shall be accomplished, according to these arrangements, the Erie Canal enlargement and the Black River and Genesee Valley canals, will be completed, the State of New York will be free from debt, and will own 858 miles of canals, yielding

large revenues, which will be unincumbered with debt, or interest, or sinking fund accounts. We can then make such reductions of the taxes on the transportation of the products of the country to market, as may be necessary to increase their sale, to secure the commerce of the Western States, and give to our citizens the profits of a vast carrying trade.

The mistaken idea is entertained by many, that the spirit of our Constitution is hostile to our public improvements. The members of the Constitutional Convention, acted upon the belief that a sound system of finance was essential to the successful management and completion of the canals; that the improvident creation of debt, not only embarrassed the finances of the State, but also delayed the completion of the unfinished public works. The history of our canals gives abundant proofs of the truth of these propositions.

Before the year 1835, the State of New York had built 656 miles of canal, connecting the Hudson river with the Erie, Ontario, Cayuga, Seneca and Crooked lakes; and with the valleys of the Chemung and Susquehannah rivers. This great system of internal improvements cost only $11,652,652.96. Its first and greatest enterprise, the Erie canal, was commenced in 1817. It traversed a vast extent of dense forests and pestilential swamps. Great numbers of laborers were disabled or destroyed by the diseases incident to uncultivated low grounds; the contractors, without the facilities now enjoyed, in many instances without the convenience afforded by common roads, were obliged to overcome the numerous obstacles with which they had to contend, unaided by experience. Yet this great work, 364 miles in length, connecting Lake Erie with the Hudson River, cost only $7,143,789.86.

In 1835, the successful and rapid completion of the public works, and the extinguishment of the principal part of the debt created for their construction, was a just cause

for pride and congratulation. Since that time there has been expended on our canals, $25,245,000, besides $9,477,000 paid for interest; yet the enlargement is not completed, nor any new canals finished. Our finances are embarrassed, and our resources diminished, until we are threatened with an increase of direct taxation. I do not deem an apology necessary for giving in detail my views of the causes which have produced these disastrous results.

I have heretofore had occasion to examine this subject, as a member of the Legislature, and chairman of the committee on canals. At that time, as on the present occasion, I consulted those engaged in building or navigating our canals, for the purpose of obtaining correct information respecting their history, interests and condition. I have been compelled to the conclusion that the practice of borrowing and expending large sums of money within short periods of time, has been at once ruinous to them, and injurious to the public interests. The effective application of money previous to 1835, extended through a period of about eighteen years. The average amount borrowed or expended within each year, was less than $1,000,000. Speculative excitements were not then created by profuse expenditures; extravagant plans were not engendered by placing great amounts at the disposal of disbursing agents; localities were not stimulated to press for ornamental or questionable improvements. Limited annual appropriations induced all to desire such application of the money as would most promote the great object of increased facilities for transportation. When it was decided in 1835, to enlarge the Erie canal, it was proposed to accomplish the work by the application of the surplus tolls, without resorting to loans. There has been collected from taxation upon the transportation of property upon our canals, since that time, the sum of $41,227,000, the expenses of keeping them in repair amount to $11,459,000. The balance might have been applied to the completion of our public works

if we had created no debts involving charges for interest and Sinking Fund accounts; it is believed that the balance of $29,768,000, if it had been applied as it accrued from the revenues, would have finished the works; the estimate of their cost was $30,734,000. Unfortunately, the prudent system of expending only our surplus tolls was abandoned. The policy of borrowing is always adopted when money is abundant; when a speculative feeling pervades the community; when extravagant plans are popular, when materials and labor are high; and when the application of money produced the least effect. This state of affairs prevailed to an unexampled extent in the years 1837-8-9 and 1840, when under its influence and during that time, the State borrowed more than sixteen millions for canal purposes, and incurred obligations in addition, that swelled the sum of liabilities to $20,713,905.58, and created the heavy interest account that has absorbed so much of our revenues.

The expenditure of these great amounts increased the speculative spirit of the times, and caused the adoption of uselessly expensive structures on the lines of the canals. The cost of doing the work was swelled still more, by putting large amounts under contract at one time. The expense of structures was much greater than it would have been under other circumstances. The regularity of the pursuits of the industrial classes was disturbed; great numbers of laborers were drawn from all quarters, who, when thrown out of employment by the inability of the State to pay their employers, increased the general distress. The full force of the evils of indebtedness was felt in the autumn of 1841, when the State officers were unable to borrow money to pay the contractors. The work on the canals was not suspended by a mere legislative act. The stocks of the State could not be sold at par, for some months before the Legislature of 1842 convened and passed

the law to restore the credit of the State, and enable it to pay the debts due to its citizens.

In some instances the contractors were compelled to take the stocks of the State at par, and sell them in market at a loss of ten or fifteen per cent. The distress caused by the loss of public credit, was not confined to the public creditors. Their embarrassments involved others in their misfortunes. The laborers, who, relying on the ability of the State to keep its engagements, had built their humble cabins on the lines of our canals, were left in a condition of destitution and suffering. The act of 1842 was passed to restore the credit of the State, and enable it to pay its debts and relieve the public creditors. It was a bold and honest effort to stem the tide of repudiation that threatened to sweep away the character for integrity and honor of many of the States of the Union.

It cannot be said our condition in 1842 was owing to the financial embarrassments of the time. If the State had not involved itself in debt, it would have been beyond the reach of pecuniary revulsions. Instead of increasing the distresses of the farmers, mechanics, and merchants, by borrowing the money they needed, it would have afforded them relief by the annual expenditure of its surplus canal revenues, thus giving employment to labor, and creating a demand for the productions of the soil. But the State fell from its proper position, and in the place of giving aid to its citizens, it became a competing borrower in the money market.

In consequence of the absorption of its revenues by sinking funds and interest accounts, it was unable to avail itself of the low prices which prevailed from 1842 to 1847. The annual expenditure of the surplus revenues we should have had in those years, if we had borrowed no money, would have been of great advantage to our unfinished works, while it would have given seasonable relief to our citizens.

It is desirable to have contracts on the public improvements taken by men whose skill and experience enable them to perform the work upon terms favorable to the State, and yet profitable to themselves. When large amounts are borrowed and expended within short periods of time, inexperienced persons are induced to leave their proper pursuits and apply for contracts. It is evident that such persons must be paid high prices or be compelled to apply to the Legislature for relief. This has been a source of loss to the State, and of great evil in legislation.

The system of borrowing affects injuriously the public interests in other respects. More than $40,000,000 have been paid to the State for tolls, in addition to the cost of transportation, by those using our canals, since 1835. This enormous weight of taxation has borne heavily upon the producing classes and business interests of the country. If the State had created no debt for canal or other purposes, since 1835, we could now, or in a few years, relieve the canal commerce from any taxation beyond the amount necessary to keep them in repair, and make such contributions towards the support of government as might be deemed advisable. The aggregate of these surplus revenues would amount, in 1855, to more than thirty-eight millions of dollars, a sum sufficient to have completed the Erie Canal enlargement, the Genesee Valley and Black River canals, and to have paid the balance of canal indebtedness due in 1835.

The toll upon the transportation of a barrel of flour from Buffalo to Albany, at the present reduced rates, is about twenty-three cents. If we were not burdened with debt, eight cents would be its proportionate amount of tax for keeping the canal in repair, and contributing an ample yearly sum towards the support of government. The saving of expense of transportation, by the completion of the enlargement, would have been ten cents more, making a diminution of twenty-five cents in the expense of convey-

ing this important article of food and commerce to the city of New York.

It is deemed a matter of great national interest to be able to export freely the productions of the soil; the continuance of taxation, which should have been avoided, will frequently prevent the shipment of provisions, deprive the farmer of a market, and the merchant and ship owner of an important trade and transportation.

If a tax of twenty-five cents should be imposed by legislation on each barrel of flour consumed in our eastern cities, or exported from New York, such an act of injustice, mischief and folly would be justly denounced by the laborer, merchant and farmer. To prevent such injurious legislation, the Constitution of the United States provides that "no tax or duty shall be laid on articles exported from any State."[f] Our unfortunate canal debt, as it practically imposes such a tax, does inflict this injury upon us in addition to the derangement it has occasioned in our finances, and the delay it has caused in the completion of our canals. The tax which it imposes upon the wood, lumber, and other coarse productions of our State is still more onerous. If from the toll now imposed upon these articles, there is deducted enough to keep the canals in repair, and to aid in supporting the State government, it will be found that if we had borrowed no money and had finished the canals by our surplus revenues, the toll on a thousand feet of pine lumber from Dansville to Albany, on the Genesee Valley canal, could be reduced one dollar; that a reduction could be made of 33 cents on each thousand feet of green hemlock, and of 67 cents on each thousand feet of green spruce, and of 18 cents on each cord of wood carried to market from the head of the Black River feeder. Investigation will show that the canal debt has materially diminished the value of real estate in many localities.

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[f] U. S. Const. art. 1, § 9, clause 5.

The amount of business upon the canals is not governed by the amount of the productions and supplies of the west, for they are inexhaustible; but by the demand for them in the markets of the eastern cities, or of the commercial world. The extent of our market, and the distances to which we can export our productions, depend upon their cost in New York. We cannot foresee how far the unfortunate policy we have pursued will deprive us of the advantages of foreign markets; but it will without doubt affect seriously the exportation of provisions.

The object of the Constitution is to prevent a recurrence of the evils we have experienced, to provide for the extinguishment of our debts, and for a judicious prosecution of our public works.

Since the adoption of the Constitution, there has been expended upon the public works $6,715,000; the surplus tolls applicable to the purpose, amounted, in 1851, to $964,432. In 1851, the Legislature passed a law to raise nine millions of dollars for the purpose of completing at once, the unfinished public works; and at the same session relieved certain railroads from the payment of tolls levied to protect the canal revenues. It was objected to the law of 1851 that it violated the letter and spirit of the Constitution[z], and would produce the evils which it was designed to prevent; that if the law was constitutional, it would injure our canal system by burthening it with the payment of the principal and interest of the sum borrowed, rendering continued taxation upon its commerce necessary; that the expense of the work would be increased by putting so much under contract at one time; that prices were high and the money market inflated, and would become more so, under the influence of the law, as it permitted the certificates for the money borrowed to be made the basis for banking, thus converting the indebtedness of

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z Const. 1846, art. 7, §§ 3, 12.

our canals into bank bills for circulation; that if the avails of the certificates should not be equal to the amount of the contracts made under the law, while the indebtedness would be increased, no resources would be left for the completion of the works, as the bill proposed "to sell all surplus revenues" applicable to that purpose, for the repayment of the nine millions raised under its provisions.

Unfortunately the Legislature rejected a proposed amendment, providing that the constitutionality of the law should be determined before any contracts should be made, or money borrowed. Canal certificates for $1,500,000 were sold in August and December, 1851, at a premium of less than one per cent, while the stock of the State, of known constitutionality, bearing the same interest, commanded a premium, ranging from 9 to 16 per cent. The contracts were let; it has been supposed that they only amounted to $8,029,727.45, but this is upon the assumption that all the excavation on the enlargement would be of the easiest kind, and of the description which was to have been done at the lowest prices under the contracts. No allowance was made for the fact, that by the terms of these contracts, much higher prices were to have been paid for the quicksand or hardpan that might be excavated in the performance of the work. It is difficult to estimate what amount would have been required, if the law had been declared constitutional; the aggregate is variously estimated by different engineers at from ten to thirteen millions of dollars. For the payment of the expense of the work beyond the amount to be raised by the law of 1851, there was no resource left, as the surplus tolls were all disposed of, until the $9,000,000 were paid; and the works would have stopped, or resort must have been had to taxation upon the people.

The law was declared unconstitutional by the highest judicial tribunal of our State. Justice requires that the money received on the sale of the certificates should be

refunded, and that the State should pay for the work done under the contracts. The amount required for this purpose, must be raised by a tax, or by submitting to the people a law authorizing a debt, and providing for the payment of the interest and principal by a tax, according to the provisions of the Constitution.[h]

Although the law has been pronounced unconstitutional, the legislation of 1851 has seriously affected the resources of our canals.

For the fiscal year ending September 30th, 1851, the surplus amounted to $964,432; for the fiscal year ending September 30, 1852, they are less than $300,000, a sum insufficient to have paid the interest on the proposed debt of nine millions. When tolls were taken off the lateral railroads, the canal revenues were not only deprived of a contribution from that source, but the roads became more formidable competitors, and rendered necessary a reduction of canal tolls.

The honor and the interest of the State of New York, require the completion of the Erie canal enlargement, and the Genesee Valley and Black River canals. These enterprises have lost none of their importance. Their completion is demanded as soon as is consistent with a judicious and economical application of money. The amount needed to finish the Black River canal, and improvement, is $248,784; to complete the remaining thirty miles of the Genesee Valley canal, is $389,000. Upon the Erie canal, the locks, aqueducts and other structures, which determine the future size of the enlargement, are mostly completed. The work which remains, is principally the adaptation of the channel to the size of these structures.

The Canal Board have directed the old locks between Port Byron and Rochester, to be lengthened and widened, and contracts have been made to have the work done

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[h] Const. 1846, art. 7, § 12; see Newell v. People (1852), 7 N. Y. 9.

during the suspension of navigation, so that they may be brought into use by the first of June. When this is accomplished, a boat of the dimensions adapted to the enlarged canal, can pass from Lake Erie to the Hudson River. When the new locks upon the Oswego canal are finished, the same class of boats can also be used upon that route. The impression prevails, that the work which has been done upon the enlargement, is useless until the entire enterprise is completed, and this is frequently urged as a reason for making a debt to complete it at once. This is not so. The improvements already made have doubled the capacity of the canal. When it was first built, the boats used, carried on an average, less than forty tons.

The average tonnage of the boats built in 1844, was 64 tons.

"	"	"	1845,	"	67 "
"	"	"	1846,	"	73 "
"	"	"	1847,	"	76 "
"	"	"	1848,	"	74 "
"	"	"	1849,	"	76 "
"	"	"	1850,	"	80 "
"	"	"	1851,	"	87 "
"	"	"	1852,	"	90 "

The application of surplus revenues, and some small appropriations made before the adoption of the Constitution, have increased the capacity of the canal nearly one-half since 1844; and when the locks are lengthened it can be navigated through its entire length by boats of the largest contemplated size, carrying one hundred and twenty tons. Boats of this size are now used between Rome and Albany, and between Buffalo and Rochester. It appears from examinations made by the State Engineer, that with an expenditure of about $400,000 in addition to the work under contract, the water can be deepened so that the new boats can carry one hundred and fifty tons, or four times the original tonnage. Only $200,000 of this amount will be

expended for purposes that are temporary, or that will not advance the enlargement. The work under contract for enlarging the locks, will make this improvement of the channel indispensable. Without it, the wedging of boats will prove a serious difficulty.

If one million of dollars can be expended, annually, upon the unfinished public works, the lateral canals will soon be finished, the enlargement constantly improved from year to year, and the boats hereafter built can soon carry their full loads of two hundred and forty tons. This increase of tonnage will not require any increase in the dimensions of those built after this year, as they will be of the full size required for the enlarged canals. It will be gained by allowing them to draw more water. Every increase of six inches to the draft, will add about twenty-five tons to their loads. To gain this increased tonnage, from year to year, it is not necessary to make repeated improvements, of the whole channel of the canal; it can be obtained by finishing the enlargement at the obstructed points, and by procuring an abundant supply of water at places where the want of it occasions difficulty.

Of the enlargement, about 150 miles are completed. The capacity of the remaining 214 miles, is very unequal on different sections. On some portions of the old canal, the boats adapted to the enlargement can be conveniently used, while in others, the smaller ones, when loaded, are delayed by want of water or by narrow channels. The points of least capacity on the canal, which may be very short in extent, limit the size and tonnage of the boats navigating its entire length. Removing the obstructions at such points, will practically increase the capacity of the whole canal. The judicious application of expenditures to the most needed improvements, will rapidly increase the amount carried by the enlarged boats.

The western end of the canal is supplied with water from Lake Erie to the Seneca river, a distance of 159

miles. It is difficult to keep up a supply for the locks at the eastern end of the line, through a narrow and obstructed canal, and the State has been frequently compelled to take water from the Genesee river and other streams, to the great detriment of the manufacturing establishments dependent upon them. The introduction of enlarged boats will diminish the evil, as they will lessen the number of lockages, and the amount of water drawn off by each lockage. The early enlargement of the canal at different points between Buffalo and Rochester, will entirely obviate the difficulty, and improve navigation, by allowing an abundant flow of water from Lake Erie.

It is very important to allow the enlarged boats to be introduced at this time, for other reasons, although their whole capacity cannot be used immediately. There will soon be a deficiency of boats, unless the number built in each year shall equal the number destroyed by time and use. This will be very injurious to the commerce of the canals. The forwarders and boatmen are anxious to build their boats of full size, that they may not lose their investments in this kind of property. These vessels will not be able to carry over one hundred and twenty tons at first, yet they will meet the increased demands of commerce, while the quantity they can carry will not give them such advantages as to destroy the value of the present class of boats. These can be run with profit, until they are worn out or placed upon the lateral canals. Many of the smaller boats can be lengthened, and all will be able to make their trips in less time than heretofore. The number now navigating the canals is computed to be about 4,000, and their value about $3,000,000. They constitute the means of support to their owners, many of whom have invested all their property in them. Any sudden change destroying the property of a meritorious class of citizens should be avoided.

I have deemed it my duty to give detailed statements

on this subject, to correct the impression that we can derive no advantages from the expenditures on the enlargement until it is completed; to show that we are now benefited by the improvements made; that we can render them still more available from year to year, by the judicious application of moderate sums; that we can have "an enlarging canal until it becomes the enlarged canal;" that this annual increase of capacity will meet the increasing demands of commerce; and that all this can be effected without the creation of a large debt, which experience has shown to be prejudicial to our public works.

The purpose of our canal system is to direct the vast commerce of the west into artificial channels traversing our State, and thus secure to us the profits arising from its transportation. Can these artificial channels be made cheap enough to command this internal trade, against the competition of the St. Lawrence and Mississippi rivers, or of the rival artificial routes?

The whole inquiry is resolved into the expense of construction and economy of management. Sound, honest and intelligent financial management, constitutes our only assurance of success in the undertaking.

Many entertain the opinion that railroads will, in a few years, to a great extent, divert commerce from the canals. I do not concur in these views, but if they should prove to be true, the canals would be of great value in controlling the rates of transportation. They are owned by the people of the State who are always anxious to reduce, to the lowest point, the expense of conveying their productions to market. Railroads are owned by individuals who are interested in getting large returns from their investments. While the canals are in good order and under judicious management, combinations cannot be successfully formed between corporations to the detriment of the public interests.

To complete our unfinished public works in the manner

above proposed, it is necessary to expend about $1,000,000 annually. If the amount of the surplus tolls could be restored to the point at which they stood in 1851, they would be sufficient for the purpose, but they are less than $300,000 for the fiscal year ending September 30, 1852, and in the year 1855, an additional charge of $400,000 will be made upon them for the payment of the canal debt. We have reason to believe the present low rate of tolls and the enlarged capacity of boats will greatly augment them, but we cannot hope that they will give the required amount beyond this additional charge of $400,000. We cannot raise the rates of tolls, and it may be desirable to reduce them.

The competition between the canal and other channels of commerce, is now very active. An increase of tolls would either drive business from the canal, or compel forwarders and boatmen to reduce their charges which are now low enough. Low tolls not only widen the circle from which we draw business, but they also enlarge the bounds of the markets within which the products of the country are sold. If we would retain commerce upon our canals, we must make them its cheapest avenues. The great difficulty with which we have to contend, is the annual tax of $2,250,000, caused by our present debt, which will hereafter be levied upon our canal commerce in addition to the expense of keeping the canals in repair. If we can keep down the tolls and the charges for transportation, by the introduction of large boats and an annual increase of their loads, we shall be able to extricate our public works from their present embarrassments.

There is now estimated to be due to contractors and for land damages, &c., for a large portion of which, drafts have been given by the Canal Commissioners on the Auditor, which are unpaid by him for want of funds	$400,000

The amount estimated to be due for work performed under the contracts made on the 30th December, 1851, is.....		$200,000
The cost of the work recently let between Port Byron and Rochester will be about...		100,000
Engineering and miscellaneous expenses.....		100,000
The cost of the work on the canals necessary to be done within the year is.....		500,000
		$1,300,000
When provision is made for the payment of the $1,500,000 received on the canal certificates issued under the law of 1851, there will be made available an unexpended balance of	$250,000	
If the surplus tolls for the fiscal year ending September 30, 1852, are equal to those of last year, they will amount to	225,000	
		475,000
		$825,000

The reputation and interest of the State require that immediate provision be made for this balance of $825,000. A large portion of the amount is now due to the creditors of the State, many of whom hold drafts on the auditor, which have been dishonored for the want of funds. The residue is to make indispensable improvements upon the canals. The only way to procure the money necessary to meet these pressing demands, is to impose a tax, which, with that now levied for the support of the government, will amount to about one mill on the assessed valuations of 1851.

I deem it of great importance to secure an application

of at least one million of dollars, annually, towards the completion of the Genesee Valley canal, the Black River canal and improvement, and the enlargement of the channels of the Erie and Oswego canals. This will, in a short period of time, effect these desirable objects, and relieve the embarrassments on the line of the Erie canal, arising from an insufficient supply of water and narrow channels, and enable the boats hereafter to be built to carry their full loads of two hundred and forty tons. Many expensive works of mere convenience can be postponed until these essential points are gained. A judicious application of six millions of dollars (a sum nearly equal to the original cost of building the whole Erie canal) expended in equal annual sums, will effect these great objects.

It is impossible to estimate with any degree of accuracy, the amount of the surplus tolls, during the next six years. To enable the State to make an annual expenditure of one million of dollars on our canals, it will probably be necessary to raise in each year, from some other source, about $500,000, in addition to the amount of the surplus tolls.

Different modes have been proposed to raise sums necessary for the prosecution of our public works. The Legislature may, in each year, impose a tax for that purpose; or, it may borrow the money under the provisions of the 12th section of the 7th article of the Constitution, which require that an annual tax shall be imposed, that will pay the interest, and redeem the principal, within eighteen years from the time of the contraction of the debt; or, a proposal to amend the Constitution may be submitted to the people, which, by the terms of that instrument, must be agreed to by a majority of the members elected to each of the two Houses, of two distinct and consecutive Legislatures, and then submitted to the people for their approval and ratification.[1]

[1] Const. 1846, art. 13, § 1.

Objections exist in the minds of some, to any change of the financial provisions of the Constitution, as they are apprehensive that it may lead to the improvident creation of further debt, or to a postponement of the payment of the existing debt.

If any amendment of the Constitution shall be proposed by the Senate and Assembly, to enable the Legislature to borrow money to complete our canals in the manner suggested, it should conform, in all respects, to the provisions of the Constitution,[1] in relation to the payment of the existing indebtedness, by requiring the creation of a sinking fund to pay the interest and redeem the principal of any such debt, within eighteen years from the time of its creation; and, if the surplus tolls should be insufficient for the purpose, that the Legislature shall provide for any deficiency by equitable taxes.[13]

The finances of the State are not in a satisfactory condition. In 1814 the State had a fund applicable to the support of its government amounting to $4,396,943. This has been spent and a debt created which, on the 1st of June, 1846, amounted to $5,992,840.82. To extinguish this

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[1] Const. 1846, art. 7, § 12.

[13] The legislature adopted an amendment substituting a new section for the existing section 3 of article 7, relative to canal administration, the payment of the canal debt and providing specifically for the completion of the Genesee Valley and Black River canals and the enlargement of the Erie, Oswego, Cayuga and Seneca canals, and the enlargement of the locks on the Champlain canal. The amendment also regulated canal contracts. The amendment was again adopted in 1854 and approved by the people at the November election in that year.

Chapter 473, passed June 29, repealed the act of 1852, chapter 270, "in relation to the enlargement of the Erie and Oswego canals, and the completion of the Black River and Genesee Valley canals."

Chapter 620, passed July 20, 1853, appropriated various sums to the canal fund to be applied to the Erie Canal enlargement, the Black River, Genesee Valley, Oswego, Cayuga and Seneca, and Crooked Lake canals and the Champlain canal. Chapter 650, passed July 21, appropriated about $4,500,000 for various canal purposes, including administration, debts, deficiencies, awards and amounts due on old contracts.

debt the Constitution provides that the sum of $350,000 shall be set apart from the canal revenues, as a sinking fund, to pay the interest and redeem the principal of the General Fund debt, including the loans to railroad companies.[k] After the canal debt is paid, the sum of $1,500,000 is to be set aside in each year for that purpose. It was evidently the intention of the Convention to ascertain and fix the amount of the canal and General Fund debt as it existed on the 1st of June, 1846, and so to arrange the Sinking Funds that their annual application would pay the interest and a portion of the principal of these debts. In 1849 the Legislature made a loan of $385,000 to pay an alleged indebtedness of the General Fund to the Canal Fund, and added this amount to the principal of the General Fund debt. Other loans were made at the same and the preceding session amounting to $889,819.34, which were added to the principal of the canal debt. The constitutionality of these loans has been asserted and controverted in official reports. Without inquiring into their propriety, at this time, it is proper for me to state that they prolong, beyond the design of the Convention, the time within which the canal debt can be paid, and make the sum of $350,000 set apart to pay the interest and redeem the principal of the General Fund debt, inadequate to the payment of the interest. Instead of being diminished, this debt is increasing by accumulation of interest; or, if the excess of interest over the $350,000 is paid from the general revenue of the State, the means to pay the expenses of government are thereby lessened, and increased direct taxation is made necessary.

The amount borrowed by the State, since the adoption of the Constitution in 1846, exceeds the amount of debt paid by the Sinking Funds.

It appears from the report of the Comptroller, which will

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[k] Const. 1846, art. 7, § 2.

be submitted to you, that the expenses of the State Government for the fiscal year ending September 30, 1852, exceeded its revenues about $200,000.

The report of that officer will show the character of the expenditures and the necessity for their retrenchment. It is believed that many charges upon the treasury can be cut off or diminished. Unless the expenses of the State are curtailed, it must withdraw its benefactions to institutions of learning and asylums for the unfortunate subjects of mental and physical infirmities, or it must increase the amount of taxes imposed for the support of Government.[14]

A strict regard for economy and the mandates of the organic law are of vital importance in republican governments. The Constitution of our State is the barrier created by the people for their own protection against injudicious or injurious legislation. The Constitution of the United States is the bond which holds together the numerous independent States of this confederacy, enabling them "to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to us and our posterity."[1] Under the terms of this compact, the different States of the Union, occupying a territory nearly equal to the whole of Europe, have existed in harmony, notwithstanding great diversity in their condition, pursuits, climate, productions, and domestic institutions. We can perpetuate our Union only by a strict construction of the Constitution of the United States, and by confining the action of government to those subjects designated in the compact of Union, and which are of common interest and value to all portions of this great confederacy.

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[14] By chapter 651, passed July 21, the tax rate in addition to that already established (one-quarter of a mill) was fixed at three quarters of a mill for 1853, and one-half of a mill for 1854.

[1] U. S. Const. Preamble.

The welfare of our State and Nation, will be best promoted by rigid economy in the conduct of their affairs, and by a strict maintenance of Constitutional Law.

HORATIO SEYMOUR.

Albany, January 4, 1853.

SPECIAL MESSAGES.

January 17. To the Assembly: Transmitting the annual reports of the Commissary General and Inspector General.

January 17. To the Assembly: Transmitting a statement of commutations, pardons, &c., for the year 1852.

January 24. To the Senate: Transmitting the annual report of the Adjutant General.

March 29. To the Assembly:

"I transmit herewith copies of a circular addressed to me by his Excellency, William Bigler, Governor of the State of Pennsylvania, and other gentlemen, officers of a convention of delegates from the thirteen original States of the confederacy, held at Philadelphia during the last summer. The convention assembled on the invitation of the city councils of Philadelphia, to consider the propriety of erecting on the public square, adjacent to the Hall where the Declaration of Independence was formed and adopted, and from whence it was promulgated, some suitable memorial of that event and of the glorious men, our ancestors, who forever severed their country from all subjection to Great Britain. Delegates appeared from nine of the original States, appointed by their respective Legislatures or Governors. Two citizens of this State were appointed by my predecessor, in consequence, it is understood, of the subject having been brought to the attention of the Legislature at such a late period of its session, that no action could be had upon it, and from a desire on his part to exhibit a proper courtesy to our sister State, and the interest

which all our citizens feel in any movement indicative of veneration for the principles of the Revolution, and of gratitude for the men who achieved it.

Copies of the proceedings of that convention accompany the circular, and will also be laid before you. It will be seen that a plan of proceedings was adopted, by which the old thirteen States in their sovereign capacities, are to take the matter into their own hands, through the agency of a board of trustees, consisting of one appointed by each State. This board is to determine the design and plan of an appropriate memorial and its expense; to superintend and direct its construction and the disbursement of the moneys contributed; and to keep it in repair. The expense is proposed to be apportioned among the States, according to their Representatives in Congress. The present idea appears to be ' to erect a monument with thirteen sides or faces, united by an entablature upon which the Declaration of Independence shall be cut into the solid stone, surmounted by a tower or shaft; the several thirteen faces to contain such inscriptions and emblazonings as each State shall direct, commemorative of some citizens of her own who took part in the responsibility of that Declaration.'

All the necessary arrangements appear to have been made ' to afford every security that human authority can furnish for the perpetual consecration of the monument and its appurtenances to the purpose designed.' The city councils of Philadelphia have executed an irrevocable grant of the necessary grounds and the most ample guaranties for its consecration to the sacred purpose.

The Legislature of the State of Pennsylvania has passed a law sanctioning the grant, pledging her faith to her sister States to enforce a strict performance of all the engagements of the city councils; appointing a trustee on her part, with wise provisions to insure economy, accountability and fidelity; and pledging the State to make provisions for the payment of her proportion of the expense

when ascertained by the board of trustees, in such instalments as shall be necessary.

This enterprise has been warmly recommended by the Governors of Virginia and New Jersey in messages to the legislatures of their respective states. A bill in conformity with the law enacted by Pennsylvania, has passed the senate of New Jersey by an unanimous vote, and a similar bill will pass the legislature of Virginia.

The eloquent address of the convention to the people and legislatures of the thirteen states, which will be found in the proceedings, presents so fully the considerations of patriotic duty which urgently press upon us to participate in this noble enterprise, that I content myself with referring to it, and adopting as my own, one of its paragraphs: 'as the third generation of that posterity for whom the men of the Revolution chiefly labored, and suffered and died, it is peculiarly fitting that we should erect such representations of their great and controlling acts as shall speak to our own hearts, and shall testify to God and the world, that we appreciate and reverence, and would cultivate and disseminate, the mighty truths and principles which brought our nation into existence, which constitute its very life, and of which it seems designed by Providence to be the special defender and protector.'

I cordially invite your attention to the subject, and respectfully recommend the passage of a law authorizing the appointment of a trustee on the part of this State, on whom powers should be conferred similar to those contained in the law of Pennsylvania, so that there may be a unity of system and that all the states may in all respects be placed on the same footing. No plan of action can be effectually matured, without a board of trustees clothed with authority by their respective states, and the appointment of such an agent is therefore indispensable to any action whatever on the subject. When the board, after a survey of the whole ground, shall have agreed upon a plan, determined

the extreme cost of the work, and ascertained the just proportion to be contributed by each State, and the periods when the instalments, extending probably over several years, will be wanted, they would report to their several constituencies, who will possess the materials for making the requisite appropriations to meet the proposed instalments; until then, no appropriations will be necessary.[15]

HORATIO SEYMOUR."

April 1. To the Assembly:

Veto of a bill entitled "An act to amend an act entitled 'An act for the incorporation of the village of Oxford, and for other purposes,' passed April 6, 1808."

"The Constitution (art. 6, sec. 17), provides that the electors of the several towns, at their annual town meeting, elect justices of the peace for four years, and that their number and classification be regulated by law; and the 20th section of the same article prohibits judicial officers, except justices of the peace, from receiving any fees or perquisites of office to his own use. Section 2 of article 10 directs that all city, town and village officers, whose election is not provided for by the Constitution, should be elected by the electors of such cities, towns and villages.

The first and second sections of the proposed act to amend the act for the incorporation of the village of Oxford, and for other purposes, provides for an election of a police justice at the village election in May next, and confers on the said justice all the jurisdiction in civil and criminal proceedings, equal and coextensive in all respects with the justices of the peace of towns, and declares him to be a justice of the peace and a commissioner of deeds for the county, and entitles him to the same fees and emolu-

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[15] New York joined in the movement for a board of trustees to take charge of the erection of a suitable monument commemorative of the Declaration of Independence, and by chapter 450, passed June 23, authorized the Governor to appoint a trustee to represent this State. See Governor Hunt's special message of January 12, 1852, *ante*, p. 624.

ments as justices of the peace of towns; said police justice to be elected by the electors of the village of Oxford.

Does any section of the Constitution present an obstacle to said proposed act, to establish a police justice in a village?

The proposed act in fact creates a new justice of the peace of Oxford, not of the village only, but of the town, with the same powers and jurisdiction as conferred on justices of the towns, for the same powers and jurisdiction are conferred in direct language. The statute limits the number of justices of the peace in towns to four, and the section of the Constitution aforesaid directs that they be elected at the annual town meetings. As the Constitution provides for the election to the office of justice of the peace in a particular manner, and that by the electors of the town, at the annual town meeting, the Legislature have not the power to create a new office for the performance of the same duties, and to direct the election to be made not only at another time, but in another manner. This additional justice cannot be created indirectly. As it is unlawful to elect more than four justices in a town, it follows that no town can lawfully have more than four justices. If one police justice can be created with all the powers of a justice of a town, then their number may be increased at the discretion of the Legislature to any extent. It cannot admit of a question that an election of more than four justices of the peace in any one town would be void, and yet this act contemplates the election of a justice in addition to the four now in office.

The proposed act is in violation of the fundamental law, as

1st. It, in fact, provides for the election of a town officer by the electors of a village: As adjudged in *Ex parte* Quackenbush (2 Hill, 369), the Legislature have not the power of providing for the election of justices of the peace, except at the annual election.

2d. It confers jurisdiction, not local, but coextensive with justices of towns, and

3d. If the office be not that of a justice of the peace, the allowance of fees and perquisites is in conflict with the Constitution."[m]

The bill was not passed over the veto.

April 5. To the Legislature:

EXECUTIVE CHAMBER,
ALBANY, *April 5th*, 1853.

"I deem it my duty to call the attention of the Legislature to the necessity of making immediate appropriations to secure some essential improvement of the Erie and Oswego canals. There is reason to apprehend that the commerce of these canals will be seriously embarrassed, unless the improvements suggested in my annual message, and recommended by the Canal Commissioners and the State Engineer, in their reports to the Legislature, are made at the earliest practicable period. Great anxiety is expressed on this subject, by the forwarders and boatmen using our public works.

On the first day of June next there will be a complete line of enlarged locks on the Erie canal between Albany and Buffalo. A large number of boats, capable of carrying 240 tons, and adapted to the 'enlargement' have been built during the past winter, and will be placed upon the canal and brought into use when the new locks are completed. I suggested, in my annual message, that it was 'very important to allow the enlarged boats to be introduced at this time, although their whole capacity can not be used immediately. There will soon be a deficiency of boats, unless the number built in each year shall equal the number destroyed by time and use. This will be very injurious to the commerce of the canals. The forwarders

[m] Const. 1846, art. 6, § 20.

and boatmen are anxious to build their boats of full size, that they may not lose their investments in this kind of property. These vessels will not be able to carry over one hundred and thirty tons, at first, yet they will meet the increased demands of commerce, while the quantity they can carry will not give them such advantages as to destroy the value of the present class of boats. These can be run with profit, until they are worn out or placed upon the lateral canals. Many of the smaller boats can be lengthened, and all will be able to make their trips in less time than heretofore. The number now navigating the canals is computed to be about 4,000, and their value about $3,000,000. They constitute the means of support to their owners, many of whom have invested all their property in them. Any sudden change destroying the property of a meritorious class of citizens should be avoided.'

The Canal Commissioners state in their report, that ' at many points on the middle and eastern divisions, and to a far greater extent on the western division, many of the bends in the canal are too short, and the canal too narrow, to pass boats of much greater length and width than those now in use.'

' That they have not the authority to make the improvements necessary to afford the enlarged boats a ready passage. If such are to be brought into use next season, these improvements must be authorized by the Legislature or Canal Board.'

' The old Erie canal was 40 feet wide at the top water line, and 28 feet at bottom. A very considerable portion of the line, where there has been no enlargement, is no wider now than originally constructed.'

'A large proportion of the boats now in use are 14 feet 6 inches wide, ' from outside to outside,' at the head of the floor timbers; the extreme width of a boat that can pass the enlarged locks loaded is, at the same point, the head of her floor timbers, 15 feet 7 inches. Many of this

class are now building. It is plain to be seen that unless greater width is given to the bottom of the old canal, the navigation must be greatly obstructed by the wedging of boats in the narrower portions of the line.'

'The trade during the past season has been seriously embarrassed for the want of breadth in the canal at many points to allow the largest of the old class of boats to pass each other loaded, and without the improvement of the old canal, if the enlarged boats are brought into use, it is certain that these embarrassments will be multiplied.'

'It is therefore of the utmost importance, in order that the enlarged boats may be brought into use, that the Commissioners should be authorized to make the necessary improvements before the opening of navigation in the spring.'

'This work can be done at a moderate cost, so as to allow the enlarged boats not drawing more than three and a half feet of water, to pass each other.'

'The authority to do this work, if given at all, should be given promptly, that forwarders and boat builders may make their arrangements understandingly in reference to the business of the next season.'

'The State has suffered largely in her revenues for the last three or four years, from the uncertainty existing as to the future condition of the canals; and as a direct consequence, the aggregate tonnage of the boats on the canal has been inadequate to do the business offered transportation. For the want of means to do the business promptly, canal freights have advanced for the last two years, in the face of a reduction of canal tolls, and a large trade of many hundred thousand tons has thus been forced into other channels.'

'Boats of the old size have not been built in sufficient numbers to meet the wants of the trade, because of the public expectation that the canal would soon have capacity for larger boats, rendering those of the old size comparatively useless. Enlarged boats have not been built in any

considerable numbers, because of the uncertainty that exists up to this time as to when they can be brought into use.'

'This widening and straightening of the old canal, which can be done at a comparatively small expense, is recommended merely as a temporary relief to the trade, by drawing upon the canal a sufficient number of boats to meet in part its immediate demands.'

Mr. McAlpine, the State Engineer says, in his report to the Legislature, that 'he had submitted to the Canal Board an estimate of the cost of raising the banks for the entire length of the Erie canal, where the enlargement has not been made, so as to obtain a depth of five feet of water.' That the estimated cost of the proposed improvement is as follows:

Eastern division	$90,648
Middle division	78,500
Western division	364,819
	$533,967

He also states 'that the use of enlarged boats will require an enlargement and improvement of the channel way. The elevation of the water on the plan recommended would furnish an additional width. On the straight portions of the canal, two boats of the enlarged size, drawing 3 feet of water, could pass each other. At the curves, and at some places where the width of the present canal has been contracted, it will be necessary to increase the width to permit two boats of this size to pass each other.'

'It is believed that boats of the enlarged size will be gradually introduced to replace those annually worn out, and that these improvements in the channel way can be made from year to year, so as to increase the capacity, and reduce the cost of transportation, until the enlargement

can be completed.' The State Engineer also states 'that the performance of this work will reduce the cost of the completion of the enlargement about $200,000. In other words, the sum of $334,000 would be required in this plan for the temporary facilities which it would afford while the enlargement is in progress.'

It appears from Mr. McAlpine's statement, that the expenditure of a sum for temporary purposes, less in amount than one year's interest upon the debt it is proposed to create for the completion of our public works, will double their capacity, will admit of the introduction of the enlarged boats, will cheapen transportation, without creating any additional burthen of debt, and will obviate the danger that the commerce of the canals may be injuriously embarrassed, if not disastrously obstructed during the coming season.

The State Engineer also informs the Legislature that 'the following work is required for the *safety* of the canal, viz: 'The construction of four aqueducts in Montgomery county, west of Schoharie creek; of the second locks at Nos. 2, 34, and 39 to 42; several waste-weirs and culverts; a dam and a feeder at Rome; a culvert at Albion; the aqueduct over the Oak Orchard creek, and the ship locks at Black Rock.'

The opinions which are expressed by the Canal Commissioners and the State Engineer in their reports, and the recommendations which I submitted to the Legislature at the opening of its session, in favor of immediate legislation, to secure such improvements of the Erie and Oswego canals, that they could be navigated by the enlarged boats, are strengthened by the result of an examination made during the winter to ascertain the number of boats now used upon our canals. It appears that their number in 1848 was 3,991, while their present number is 3,404, showing a diminution of 587. There has also been a falling off from their tonnage. This alarming result shows, that

unless immediate measures are adopted to admit of the new and enlarged vessels, the cost of transportation must be increased, and the business diverted into other channels, in consequence of the want of boats. A large portion of those now in use were built in 1847, or prior to that time, and are becoming old and unfit for the purposes of transportation. The trade and tonnage report prepared by the Auditor, contains much interesting and valuable information upon this subject.

The interests and the security of the commerce of the Erie and Oswego canals demand the immediate completion of the improvements which have been recommended. The amount required for this purpose can only be obtained by some mode of taxation. The revenues of the canals have already been anticipated for other purposes, and a large amount of drafts upon them are now outstanding and under protest. If the canal revenues were not thus absorbed the Constitution would not admit of their application to these purposes.

The amount required for these important, if not indispensable objects will not much exceed one year's interest on the debt it has been proposed to create for the completion of our public works, or the amount of $550,000 which our canals annually pay into the treasury for the support of the State government, and the payment of the interest of the State debt created for the New York and Erie railroad, and for other purposes.

The judicious expenditure of $533,000 will nearly double the capacity of the Erie canal; will admit of the convenient use of the enlarged boats; will cheapen navigation and protect its commerce from the danger of *an entire interruption,* by the failure of the structures alluded to by the State Engineer. Fifty thousand dollars will in like manner improve the channel of the Oswego canal. The sum of seventy-five thousand dollars, will connect the Black River canal with the Black river at High Falls; will enable the

inhabitants along fifty-four miles of the course of that river and its tributaries, to use it for the purpose of transporting their lumber and other products to market. One hundred thousand dollars will extend the Genesee Valley canal to Cuba, a distance of sixteen miles.

These canals are the property of the people of this State. They now contribute more than half a million annually towards the support of government and the payment of the State debt, besides the annual charge of $1,300,000 to pay the interest and principal of the canal debt, which will fall upon the people of the State, if the commerce of the canals is diverted from them.

When the canal debt is paid, the revenues of the public works will belong to the people of the State, to be applied by them to such purpose as they may deem proper. It cannot be that there is any unwillingness on the part of the people of this State to have the sum of $758,000 raised by some form of taxation, where the objects to be attained by its expenditure are so important to the internal commerce of our State and to the interests of different localities and to the preservation of their own property.

If it is expedient to pay ten million dollars to finish our public works, it is certainly wise and prudent to secure a large proportion of the advantages of their completion, when it can be done by so small an expenditure.

The improvements recommended will in no degree conflict with the proposed enlargement of the Erie canal. On the contrary, they will hasten the completion of that work, by increasing our domestic commerce, cheapening transportation, and enlarging the revenues of our public works.

I still entertain the opinion I expressed in my annual message, that the honor and interest of the State of New York require the completion of the Erie canal enlargement. I also think the Oswego (and the Cayuga and Seneca canals) should be increased to the same proposed dimensions of 7 feet depth, and 70 feet width; and I recommend that an annual appropriation of at least one million

of dollars shall be secured by one of the modes suggested by me at the commencement of the session for the purpose of effecting these objects.

I suggest a moderate annual appropriation, because past experience and the history of our canals demonstrate that the efficiency of appropriations depends less upon their amount, than upon the wisdom, economy and fidelity with which they are applied.

Under the prudent policy which was pursued before 1835, this State constructed and nearly paid for six hundred and fifty-six miles of canal connecting the Hudson river with the Erie, Ontario, Cayuga, Seneca and Crooked lakes, and with the valleys of the Chemung and Susquehanna rivers. This great system of internal improvements cost only $11,652,652.76; although it was conducted under great disadvantages, as the Erie canal traversed a great extent of dense forests and pestilential swamps.

Since that time we have expended on our canals $25,245,000, besides $9,477,000 paid for interest, yet no public work commenced subsequent to 1835 has been completed. [See note 13.]

HORATIO SEYMOUR."

April 12. To the Assembly: Transmitting a report of the revision of the public school system.

April 12. To the Assembly:

Veto of the following bills: "An act to release to James Knox and William Knox the interest of the State in certain bonds and mortgages."

"An act authorizing the Attorney General to discharge a judgment against the Potsdam and Watertown Railroad."

"An act to release the interest of the people of the State of New York in certain real estate of which George McCaughel died seized and possessed."

These bills were vetoed on the ground that they had not received a two-thirds vote, as required by the constitu-

tion.[n] They were afterwards passed by a two-thirds vote and were approved by the Governor, becoming respectively chapters 225, 229 and 359.

April 12. To the Assembly:

Veto of a bill entitled "An act incorporating the Franklin Bridge Company."

The bill authorized the corporation to take private property and provided for the appointment of commissioners by a justice of the supreme court instead of by the court, as required by the constitution.[o] The Governor vetoed the bill on this ground. It was afterwards amended and passed, and became a law, chapter 214, on the 12th of April.

April 13. The Legislature adjourned without day.

1853. APRIL 14. EXTRAORDINARY SESSION.

The regular session was adjourned on the 13th, the same day the Governor issued a proclamation convening the Legislature in extraordinary session the next day, the 14th. The Legislature met on that day, and the Governor transmitted the following

MESSAGE.

STATE OF NEW YORK,
EXECUTIVE DEPARTMENT,
ALBANY, *April 14th*, 1853.

TO THE SENATE AND ASSEMBLY:

The Constitution makes it the duty of the Governor to convene the Legislature on extraordinary occasions.[p] The

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[n] Const. 1846, art. 1, § 9.
[o] Const. 1846, art. 1, § 7.
[p] Const. 1846, art. 4, § 4.

Legislature having adjourned without providing for the preservation of the public faith, and having failed to pass laws essential to the public welfare, I have deemed it my duty to exercise the power entrusted to me by the Constitution, and to convene you at the earliest practicable period. The continuance of the session for a few days, while important subjects of legislation are yet familiar to you, will enable you to perfect measures demanded by the public good. No appropriations have been made for many of the expenses of government, and for the support of many of the charitable institutions of the State. The failure to pass the annual tax bill for the city of New York will not only embarrass the government of that city, but will probably prevent the payment of its contribution to the Common School revenues. This will cause great embarrassment and distress among the teachers who are dependent upon these revenues for their support.[16] Immediately before the adjournment of yesterday grave charges were preferred by a committee of the Assembly against one of the Canal Commissioners. It is due to the officer thus accused, that prompt action should be had upon a subject so deeply affecting his character and honor, as well as the interests of the State. It would be an act of injustice to compel him to rest under the imputations contained in this report until the meeting of the next Legislature, without giving him an opportunity to vindicate his honor by a full and fair investigation.[17]

No appropriations have been made for the payment of

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16 Chapter 232, passed April 15, and chapter 599, passed July 21, provided for taxes in the city of New York.

17 On the 13th of April, 1853, charges were presented in the Assembly against John C. Mather, one of the canal commissioners. Articles of impeachment were adopted by the Assembly on the 8th of July. The charges were tried before the court for the trial of impeachments, which met on the 27th of July and adjourned on the 16th of September. Mr. Mather was acquitted on all the charges. This was the first impeachment trial in the State.

the interest on the canal debt. A failure to meet the engagements of the State would be a just cause for mortification to all of our citizens. It rests with the legislative branch of the government to save our State from the discredit of failing to provide for the prompt payment of its obligations. It appears, from the reports of the Comptroller, that the revenues of the general fund are insufficient to meet the ordinary demands upon the treasury. Some provision should, at once, be made to pay the necessary expenses of government:

Although the subject of our internal improvements has occupied the attention of the public and engrossed much of the time of the Legislature, the usual provision has not been made for keeping our canals in repair, or for paying the expense of their superintendence; nor has any appropriation been made of their surplus revenues for the prosecution of the work on the Erie Canal enlargement, Genesee Valley and Black River canals.

I have heretofore deemed it my duty to call the attention of the Legislature to the necessity of making immediate appropriations to secure some essential improvements of the Erie and Oswego canals. The commerce of these canals will be seriously embarrassed, if not disastrously obstructed, unless the improvements suggested in my annual message, and recommended by the State Engineer in his reports to the Legislature, are made at the earliest practicable period. Unless the channels of these canals are immediately improved, so as to admit of the use of enlarged boats, there is cause to apprehend that business will be diverted from them for the want of sufficient means of transportation. As it appears that an appropriation of less than $600,000 will nearly double the capacity of these canals, it is probable that a delay for the present season to make provision for this work will inflict upon the interests of the State and its citizens an amount of pecuniary injury equal to the cost of the improvements contemplated. If

these improvements are made, they will, in no degree, conflict with the proposed enlargement of these canals. On the contrary, they will hasten that result by increasing our domestic commerce, cheapening transportation, and augmenting the revenues of our public works.

I feel that great injustice will be done to our citizens living along the unfinished portions of the Genesee Valley and Black River canals, unless some immediate appropriation is made towards their completion. The expenditure of $75,000 will connect the Black River canal with the Black River at High Falls, and enable the inhabitants along fifty-four miles of that river and its tributaries to use it for the purpose of transporting their lumber and other products to market. The sum of $150,000 expended upon the Genesee Valley canal will give to the inhabitants living between its present terminus and Olean the use of that work for considerable portions of the year. It is unjust to the inhabitants of those regions, whose hopes have been so long delayed, to withhold or postpone these small appropriations which would be of such essential benefit to them, and would be so speedily refunded by the contributions they would bring to our canal revenues.

It cannot be doubted, that the people of this State have relied with confidence upon the present Legislature to make provision for such improvements upon the Erie and lateral canals as the necessities of the present season demand, and to prevent an entire suspension of the public works. The Legislature has failed to make any provision for the continued prosecution and completion of our unfinished canals. I still entertain the opinion I have heretofore expressed, that the honor and interests of the State of New York require the completion of the Erie canal enlargement. I also think the Oswego and the Cayuga and Seneca canals should be increased to the same proposed dimensions of seven feet depth and seventy feet width. I have heretofore recommended that an annual appropria-

tion of at least one million of dollars should be secured by one of the modes suggested by me at the commencement of the annual session; for the purpose of effecting these objects, I suggested a moderate annual appropriation, because past experience in the history of our canals shows that the efficiency of appropriations depends less upon their amount than upon the wisdom, economy and fidelity with which they are applied.

Although the Legislature, by prolonged discussions and proposed measures, have recognized the importance of completing our unfinished works, no plan has been adopted for their continued prosecution. Different propositions have been made to raise the necessary funds by taxation and by amendments of the Constitution. Two proposed amendments of that instrument have been discussed. They differ as to the amount to be borrowed in each year, the total amount of debt to be created, and the mode of repayment of the money borrowed. One proposes to borrow $2,500,000, in each year, in addition to the surplus revenues, which would swell the annual expenditures to more than $3,000,000, and authorize an aggregate increase of the indebtedness of the State to the amount of $10,500,000. The other plan proposes to borrow annually, for six successive years, a sum which, with the surplus revenues, would amount to $1,500,000, and would probably create an aggregate indebtedness of $5,000,000, if the proposed improvements are made.

The latter also distinctly guards against the application of moneys to be borrowed upon the contracts made under the canal law of 1851, and is thus disconnected from the pecuniary expectations of any class of citizens.

The deep feeling excited in the public mind by the canal lettings under the law of 1851, has created a strong opposition to any amendment of the financial provisions of the Constitution, and the differences of opinion in relation to them, have obstructed legislation, and prevented the pas-

sage of laws demanded by the interests of our public works.

As the amendment to the Constitution, proposed in the Assembly, forbids that any money borrowed should be applied to those contracts and directs, that the work to be done shall be relet and awarded to the lowest bidder, it will be received with more favor by the people of the State, as it is not open to the suspicion of being designed to advance private interests. This amendment also conforms to a suggestion made by me at the commencement of the session, that ' if any amendment of the Constitution should be proposed by the Senate and Assembly to enable the Legislature to borrow money to complete our canals in the manner suggested it should conform in all respects to the provisions of the Constitution in relation to the payment of the existing indebtedness, by requiring the creation of a sinking fund to pay the interest and redeem the principal of any such debt, within eighteen years from the time of its creation; and if the surplus tolls should be insufficient for the purpose, that the Legislature shall provide for any deficiency by equitable taxes.'

In my opinion, the amendment proposed in the Assembly is best calculated to harmonize the conflicting views entertained with regard to the proper mode of securing the completion of our public works, and I commend it to your favorable consideration. As the measures for the immediate improvement demanded by the condition of our public works, and those which are designed for their completion, are independent of, and in no degree in conflict with each other, the adoption of one should not be required as a condition to the passage of the other. [See note 13.]

For the reasons heretofore stated, I have deemed it my duty to prolong this session of the Legislature.

A few days devoted at this time, to the perfection of the important measures referred to, will not only prevent great

injury to the public honor and interest, but will also save the necessity of a renewed examination and discussion at a future day.

HORATIO SEYMOUR."

SPECIAL MESSAGES.

April 15. The Legislature adjourned to May 24.

May 26. To the Assembly:

STATE OF NEW YORK,
EXECUTIVE DEPARTMENT,
ALBANY, *May* 26, 1853.

"Immediately before the adjournment of the Legislature on the 15th of April, a bill was presented to me entitled 'An act appropriating money to the payment of interest on canal revenue certificates and on the Oswego loan.' The bill was so defective in its form, that it would not have been of any validity if it had received my signature. I therefore return the bill to the Assembly in which it originated, for the purpose of having it amended.[18]

HORATIO SEYMOUR."

June 1. To the Assembly:

Veto of a bill entitled "An act to amend an act entitled 'An act to authorize the business of banking,' passed April 18, 1838."

"In pursuance of the provisions of the Constitution, I return to the Assembly, with my objections to its becoming a law, the bill entitled 'An act to amend an act entitled "An act to authorize the business of banking," passed April 18, 1838.' The bill was received by me immediately before the adjournment of the Legislature on the 15th of April. I had at that time, therefore, no opportunity to

[18] The canal loan bill was amended and passed again and became a law, chapter 546, on the 18th of July.

examine its provisions and determine upon the propriety of approving its passage. As it received a large majority in each branch of the Legislature, I desired to give it a respectful consideration, and for that purpose retained it until the re-assembling of the Legislature.

The bill provides that hereafter the stocks of the incorporated cities of this State may, subject to certain restrictions, be used as a basis for banking, and be received as securities for bills to be issued in pursuance of the general banking law. The Constitution of the State makes it the duty of the Legislature to restrict the power of municipal corporations to borrow money, contract debts and loan their credit.[q] It is evident that this bill, should it become a law, would cause a demand for the stocks of our cities, add largely to their value in market, and create an inducement on the part of municipal corporations to incur debts. I have with reluctance signed bills permitting some of our cities to borrow money for objects which are deemed of great importance to their interests; but this bill is more clearly in conflict with the purposes of the Constitution of the State, as it offers direct encouragement to local corporations to contract debts. Is it expedient at this time, when a highly speculative state of feeling pervades the community, to encourage a disposition to incur liabilities, by converting debt into a circulating medium?

It is alleged in favor of allowing the debts of cities to be used as a basis for banking, that the stocks of this State and of the United States, the use of which as a banking basis is now authorized by law, cannot be obtained for that purpose. But it will be found from the following statement, that but a small proportion of these stocks are now pledged at the Banking Department as securities for the bank bills which have been issued and are in circulation:

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[q] Const. 1846, art. 8, § 9.

The funded or stock debt of the United States amounts to		$64,115,957
The funded or stock debt of the State of New York amounts to		23,390,802
Total		$87,506,759
The stocks of the General Government now pledged at the Banking Department for the security of the bill holders, amount to	$5,571,172	
The stocks of the State of New York pledged for the same purpose	10,184,792	
		15,755,964
Leaving stocks yet applicable to banking purposes to the amount of		$71,750,795

From this sum there should be deducted the amount of these stocks used in other States as security for banking circulation, which may absorb five or ten millions of dollars.

It is true these stocks command high prices in the money markets of the world, but they sell for no more than they are intrinsically worth. Their high values, and in fact that they are deemed safe and desirable investments, make them better securities for the bill holders, as they ensure prompt redemption under all circumstances. These stocks can be obtained at their market value, and although they pay directly but small interest to the holders, the profits of banking institutions at this time are so great that they more than compensate for any loss of interest on the securities pledged for the redemption of their notes. It is evident that the profits of banking must be limited either by judicious restraints or by competition resulting from the multiplication of banks, which will endanger our whole finan-

cial system. No better or safer plan for limiting the profits of banking can be devised than that which requires the highest and best security for the bill holders, and it is no argument in favor of cheaper securities that they will increase the profits of banking, facilitate the establishment of new banks, and thus inflate the currency of the country. It is true the increase of business makes more capital necessary in conducting it, but a large proportion of the indebtedness to the banks at this time, and the great amount of bills in circulation, are the results of speculative rather than of legitimate business demands.

There are now in this State three hundred and ten banks or banking associations. Twenty-five of the institutions have been established within the past six months, besides ten safety fund banks which have reorganized under the provisions of the general banking law. This is about equal to the entire number which were established during the preceding twelve months. It appears from the report of the Superintendent of the Banking Department, that the aggregate capital of the banks of this State, on the first of December last, was $62,207,216. At this time the capital of these institutions amounts to over $70,000,000, showing an increase of about eight millions within six months. The profits of banking have recently been unusually large, and numerous associations are now forming in different parts of our State for the purpose of engaging in this business.

If the number of banks, and the amount of banking capital shall increase hereafter as rapidly as they have during the past six months it will give an annual increase of more than fifty banks with capital amounting in the aggregate to about sixteen millions of dollars. While these institutions are multiplying with alarming rapidity, I can see no good reason for giving any new impulse to their creation by increasing their profits and lowering the character of the securities required by our present law for the protection of the bill holders.

The stocks of this State and of the general government have a value in the commercial market of the world, and will therefore, furnish a security for the redemption of the bills at periods when we suffer from financial revulsions; while the stocks of our cities having only a local value and market will be more affected by the monetary condition of the country. If our banking laws are modified to admit of the use of cheaper and inferior securities, they will of course be selected on account of the increased profit which they will afford to the banker. I deem it exceedingly hazardous at this period of speculative excitement and pecuniary expansion to diminish the security of the bill holder or to increase the motives for the establishment of banking institutions, which are already multiplying to an unprecedented extent.

For these reasons I have not approved of the bill which I now return to you."

The bill was not passed over the veto.

June 2. To the Senate: Transmitting a communication from the State Department at Washington, relative to "a subject of great importance to the public health." The journals do not contain the text of the communication.

June 22. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *June* 22, 1853.

"I herewith transmit to the Senate, a memorial of the chamber of commerce of the city of New York, relative to the encroachments upon the harbor of New York; also a copy of a letter of Major Delafield, of United States Corps of Engineers, addressed to Walter R. Jones, Esq., president of the board of underwriters upon the same subject, which I have been requested to lay before the Legislature. A letter from Walter R. Jones, Esq., accompanies the documents.

HORATIO SEYMOUR."

June 23. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *June* 22, 1853.

"I have received the following resolutions offered by the Honorable Mr. Burnett, and adopted by the Assembly on the 1st instant:

Whereas, At the town of Berne, in Albany county, on the 18th day of May, 1853, as appears by the public journals, a gross outrage was committed upon the person of Henry Lawrence, while in the discharge of his official duty, by several persons in disguise; therefore,

'*Resolved,* that His Excellency, the Governor, be respectfully requested to communicate to this House whether any reward has been offered for the discovery and arrest of the offenders, or whether any other measures have been taken for their apprehension and punishment; and further, that his Excellency the Governor, be respectfully requested to communicate to this House whether, in his judgment, any further and what legislation is necessary to prevent the recurrence of such outrages, or the better enforcement of the laws.'

In answer to the enquiries contained in the above resolutions, I respectfully state that immediately after the occurrences alluded to I had an interview with the person upon whom the assault was committed and with his counsel, and also with the district attorney and the sheriff of the county of Albany. A complaint was made before one of the magistrates of this city and placed in the hands of the sheriff. He has not yet been able to make an arrest, but I have no reason to doubt that the parties implicated will be arrested, and that the transaction will undergo a judicial investigation.

I have not offered any reward for the apprehension of the parties charged with the offence. The outrage was committed in open day by several persons, one of whom is well known and is still in the county of Albany. Under

these circumstances I deem it the duty of the officers of this county to arrest him and his confederates. In many instances the offer of rewards for the apprehension of criminals, tends to create an impression in the minds of those required to serve process and execute the laws, that they are, in some degree, relieved from their duty, as it assumes that the ordinary means of enforcing the law are insufficient. The Statutes of the State confer upon the sheriffs of the several counties the most ample powers to discharge the responsibilities imposed on them for the maintenance of the public order. It is necessary and proper to hold them accountable for an efficient discharge of their duties. They should not be permitted to say they cannot arrest those who are known to be within their jurisdiction. While the law imposes upon sheriffs the responsibility of enforcing obedience to any judicial process, it at the same time clothes them with ample powers for that purpose. Article 7, chapter 7, of the third part of the Revised Statutes, contains the following provisions:

'§ 99. Whenever a sheriff or other public officer, authorized to execute any process delivered to him, shall find or have reason to apprehend that resistance will be made to the execution of such process, he shall be authorized to command every male inhabitant of his county, or as many as he shall think proper, and with such arms as he shall direct, and any military company or companies in said county, armed and equipped, to assist him in overcoming such resistance, and, if necessary, in seizing, arresting, and confining the resisters, their aiders and abettors, to be dealt with according to law.

'§ 101. Every person commanded by a sheriff or other officer, to assist him in the execution of process as herein provided, who shall refuse, or without lawful cause neglect to obey such command, shall be deemed guilty of a misdemeanor, and subject to fine and imprisonment.

'§ 102. In case it shall appear to the Governor, that the

power of any county will not be sufficient to enable the sheriff thereof to execute process delivered to him, he shall, on the application of such sheriff order such a military force from any other county or counties of this State, as shall be necessary.

'§ 103. Whenever the Governor shall be satisfied that the execution of civil or criminal process has been forcibly resisted in any county or counties of this State, by bodies of men, or that combinations to resist the execution of such process by force, exist in any such county or counties, and that the power of such county or counties has been exerted, and is not sufficient to enable the officer having such process to execute the same, he may, on the application of such officer or of the district attorney of such county, or of one of the judges of the county courts thereof, by proclamation to be published in the State paper, and in such other papers as he shall direct, declare such county or counties to be in a state of insurrection, and may order into the service of the State such number and description of volunteer or uniform companies or other militia of this State as he shall deem necessary, to serve for such term as he shall direct, and under the command of such officer or officers as he shall think proper, and the Governor may, when he shall think proper, revoke, or declare that such proclamation shall cease at such time and in such manner as he shall direct.'

By virtue of these provisions of the law, the entire power of the State is placed at the disposal of the sheriffs of the several counties, and of the Governor for the purpose of enabling them to enforce any civil or criminal process, and they are to be held responsible for the faithful, vigorous and efficient discharge of their respective duties. I deem it incumbent upon the Executive to see that the sheriffs of the different counties carry out all the requirements of the statute, and if they fail to do so, he should remove them and put in their place faithful and energetic men. The public confidence in the prompt administration of justice

should be grounded upon an exhibition of a sense of duty and a determination to perform it on the part of executive officers, and not upon the stimulus of reward and proclamations. While it is necessary, in some instances, to offer rewards for the detection or arrest of unknown or absconding criminals, there is danger that these measures may be resorted to as an apology for the neglect to adopt or prosecute efficient measures by the regularly constituted authorities.

I do not deem any legislation necessary to secure 'the better enforcement of the law,' when resistance is made to its execution, nor am I prepared to say what further measures can be adopted to prevent the recurrence of similar difficulties. They grow out of controversies respecting the service of civil process which have, for many years past, been the subject of Executive messages and of legislative inquiry, and I have, at this time, no new recommendations to make to the Legislature in regard to them.

HORATIO SEYMOUR."

July 8 and 9. To the Senate and Assembly respectively:

EXECUTIVE DEPARTMENT,
ALBANY, *July* 8, 1853.

"A committee of the directors of 'The Association for the exhibition of the industry of all nations,' specially appointed for the purpose, have called on me to invite the Executive, and the Members of the Senate and Assembly to be present at the opening of their building in the city of New York, on the 14th day of July inst., and I am requested to communicate the same to you.

The exhibition, it is believed, will be well worthy the advance of our country in the useful and ornamental arts. The friendly competition it will necessarily produce, and the comparisons that will be instituted between the productions in all branches of industry of nearly all the en-

lightened nations of the earth, cannot fail to be interesting and instructive. Not only will foreign countries contribute largely to the exhibition, but foreign governments have manifested much interest in its success. The building is one of great architectural beauty, and with its varied contents must prove highly attractive and worthy of examination.

While your acceptance of this invitation will be gratifying to the directors of the association, it will also manifest a desire on your part to encourage and sustain their noble effort to dignify labor by new exhibitions of the genius, industry and capacity of our country.[19]

HORATIO SEYMOUR."

July 21. The Legislature adjourned without day.

1854. JANUARY 3. LEGISLATURE, SEVENTY-SEVENTH SESSION.

HORATIO SEYMOUR, Governor.

ANNUAL MESSAGE.

To THE SENATE AND ASSEMBLY.— You are assembled for the purpose of framing such laws as are demanded by the interests of the people of the State of New York. The Constitution invests you with the power,[a] and imposes

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[19] The Legislature adopted a resolution accepting the invitation to attend the opening exercises of the exhibition at the New York Crystal Palace on the 14th of July, 1853. The Assembly on the 13th appointed a committee to take charge of the arrangements for attending the exhibition. Apparently the Senate did not attend in a body, but according to the journal held a session on the 14th.

[a] Const. 1846, art. 3, § 1.

upon you the duty of adopting measures to promote education, to restrain vice, to punish crime, to protect the rights of persons and property, and to advance the welfare of this great commonwealth, composed of more than three millions of citizens.

The Almighty Ruler of the Universe has during the last year signally favored our people, and bestowed upon them the blessings of health and freedom from wars or civil convulsions. The labors of the husbandman have received abundant returns; our artizans have been constantly and profitably employed; our manufacturers have successfully conducted their varied pursuits; and the commerce of our State has extended itself far beyond its former limits. May Divine wisdom so guide your counsels, that they shall tend to the advancement of religion and learning; to the promotion of liberty and order; and to the general welfare of those whom you represent. The duties which are now imposed upon you are complicated and important. There will be required on your part the exercise of firmness, wisdom and integrity, to preserve the high character heretofore held by this State, and to maintain the prosperity which now pervades every department of its social and industrial organization.

The history of New York has been an honorable one from the earliest period. While the citizens of other States have with pious reverence preserved the memory of the incidents of their early settlements, too little attention has been bestowed on the more varied, and in many respects more interesting immigration to the shores of the Hudson. Drawn as it was from most of the enlightened nations of Europe, it established here, at an early day, the best principles of civil and religious freedom then known to the world. From the first hour of the settlement of this State, all who desired to avail themselves of the benefits of its fertile soil and ample territories, or of the great natural advantages of its position, were cordially welcomed, with-

out reference to the lands of their birth or the peculiarities of their creeds. Our State has always presented the gratifying spectacle of a prosperous and harmonious community, composed of those, or the descendants of those, who came from hostile lands, where national distinctions or differences of faith were regarded as sufficient grounds for continued warfare or religious persecution; but who have learned under our free and beneficent institutions, the advantages of toleration, and the unworthiness of national or sectarian prejudices.

Not only were different portions of New York originally settled by emigrants from the several countries of Europe, but the representatives of every European people are now scattered broadcast over our whole State. There is no civilized language which is not used at the fireside of some of our citizens, or which is not, on each returning Sabbath, poured forth in prayer and thanksgiving to the God of all nations and of all climes. When we cease to feel a just pride in our freedom from national prejudices or religious bigotry, we shall show to the world that we are less wise, humane, and tolerant, than those who, two hundred years since, first established here the institutions of religion and laws. The prosperity and greatness of New York are the results of labor, skill, intelligence, and civilization drawn from the most diversified sources, as its population is composed of those of the most varied nationality and lineage.

During the period of our connection with Great Britain the provincial assemblies of New York were the first to assert the great principles of popular rights, and of civil liberty, in constant and steady resistance to the efforts of the colonial governments to establish and extend the pretended prerogatives of the crown. The rights of the people were clearly asserted and boldly maintained; and when the period of the revolution arrived our citizens were prepared to defend their liberties, not from the influence of passion or excitement, but because they clearly understood and

appreciated the nature and consequences of threatened encroachments.

Throughout the revolutionary struggle our territories were the scenes of its most important events. New York was assailed by all the varied forms of warfare under the control of the British government, which attacked our commerce and seaports with its fleets and invaded the northern section of our State with its disciplined armies, while its savage allies desolated our frontier settlements with the torch and the tomahawk.

It is remarkable that our public spirit has not yet prompted us to follow the example of other states in commemorating by suitable memorials and monuments, the services and sacrifices of our forefathers, or in exciting the patriotism of our citizens and of a distant posterity, by reminding them that our own territories have been the scenes of events of such deep interest and national importance.

The first Constitution of this State, adopted before our national independence had been successfully asserted, evinces in every provision how thoroughly our citizens at that day understood their personal, civil and constitutional rights. To the statesmanship of New York is the nation largely indebted for the essential provisions and wise restrictions of power contained in the amendments to the Constitution of the United States. When the history of our State shall be faithfully written, and the importance of the occurrences which mark its progress shall have been tested by time, New York will be found to have occupied a more important position than has been claimed by its sons, or accorded by the citizens of other States.

Though the war of the Revolution allowed to our people but little leisure during its progress to improve the jurisprudence of the State, primogeniture and entails were extinguished — military tenures were abolished — the right of petition was firmly secured — and the great principles

of civil liberty were relieved from the restraints which a monarchical government had imposed. When peace permitted the full extension of the republican principle, and our statesmen and jurists assembled in the majesty of their representative character, the improvement of our jurisprudence advanced with a rapidity unequaled by any of the States.

Our judiciary, who have ever been distinguished for their learning, their probity and their capacity, joined fully and warmly the legislative councils in adapting our laws to our condition. Imbued with the same spirit, they expounded the statutes and moulded the principles of the common law, so as to give the utmost expansion to justice and liberty.

The great work of reconstructing the whole body of statutory laws, of condensing, simplifying and reducing them to a system, originated in this State; and its successful completion received the applause of the most distinguished statesmen of other countries. It is justly regarded as a monument of labor and ability, and has rendered an important service to the mass of our people by making our laws more accessible and familiar.

Our State was the first to establish a permanent and comprehensive system of popular education. It has been foremost in the works of internal improvement designed to facilitate commerce and intercommunication and to advance the wealth and prosperity of our people. The first steamboat was launched upon its waters — the first canal of any extent upon this continent was excavated upon its soil, and united the vast inland seas of our country with the Atlantic ocean. Long lines of railroads thread our valleys, overcome rocky barriers, and extend the advantages of commercial intercourse to the most secluded recesses of our land.

The successful achievements of our State heretofore, and the prosperity which it now enjoys, are attributable not

only to the enterprise and sagacity which have suggested great undertakings, but also to the prudence and economy of its legislation, and the official purity and stern devotion to the public interests on the part of those who were entrusted with their management. These improvements have not been the results of speculative excitements, or of profuse expenditure. On the contrary, when the great principles of prudent economy have been overlooked, or the interests of persons or of localities have been more regarded than the public welfare, our progress has been disastrously impeded.

This brief review of some prominent events has been presented to animate our citizens and their representatives with the patriotic purpose of making the annals of the future as honorable as the history of the past.

The Constitution imposes upon you the duty of guarding the interests and promoting the welfare of a State that has attained this high degree of prosperity and greatness. It will afford me great pleasure to co-operate with you in all measures which will promote the interests of our State and be beneficial to its population.

The abstracts accompanying the annual report of the Superintendent of Common Schools, will show their present condition, and the amount of money apportioned for their use during the coming year.

The amount of the Common School Fund on
the 30th of September last, was..... $2,383,251.23
Being an increase over the last fiscal year of. 28,727.14

It is estimated that the revenue of the fund during the current year, will justify an increased appropriation of $10,000.

The total amount of moneys apportioned by
the Superintendent for the coming year is.. $1,101,240.84

This sum is made up of the following items:

Avails of State tax	$800,000.00
Appropriation from the Common School and United States Deposit Fund	300,000.00
Balance in the hands of State Superintendent.	1,240.84
	$1,101,240.84

The number of schools in 1852 was 11,684.

	1851.	1852.
Whole number of children taught in district schools...	862,507	866,935
No. attending private schools.	31,767	36,844
No. of children attending colored schools	4,416	1,680
Average number of months that schools were taught in the districts by duly qualified teachers	7 7-10	7 9-10
Number of volumes in district libraries	1,570,131	1,604,210
Amount paid for teachers' wages	$1,681,316.00	$1,931,870.18
Am't paid for district libraries	90,579.50	49,499.39
Total amount expended for common schools	2,249,814.02	2,469,248.52

The subject of common school education at this time attracts a large share of attention. Many public spirited citizens have interested themselves in devising and promoting measures to extend the advantages of education — to improve its systems — to elevate its character, and to adapt it to the wants of those engaged in the different pursuits of life. We have reason to hope that their labors and investigations will lead to the adoption and practical success of measures which will be productive of decided ad-

vantages. A number of academies have recently been established in different sections of our State, and the numerous attendance of pupils shows that the benefits of education are generally appreciated. The office of the teacher is held in much greater esteem than it was a few years since. The influence of the Normal school is felt throughout the State, as it furnishes an increasing body of teachers whose superior acquirements and competency have shown the great advantages of well educated and thoroughly prepared instructors.

I recommend the separation of the office of Superintendent of Common Schools from that of the Secretary of State. The establishment of a distinct department devoted to the interests of education, is calculated to give more prominence to the subject, and to elevate it in public estimation. Every effort should be made to harmonize our system of instruction — to do away with the impression that our colleges and academies are institutions of learning distinct from, if not in some degree antagonistic to our common schools. This measure would also facilitate the establishment of agricultural or mechanical colleges, designed for instruction in the practical sciences.[1]

In accordance with the recommendation of the Secretary of State in his last annual report, I suggest the propriety of establishing State scholarships in our higher institutions of learning, for the purpose of educating young men for principals of union and high schools; and that the advantages of the endowments be conferred upon the meritorious pupils in the different counties or Assembly districts. If this system is adopted, it will serve the double purpose of elevating our common schools and of promoting

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1 The Governor's suggestion as to educational supervision was embodied in chapter 97, passed March 30, which created the office of superintendent of public instruction, and prescribed his powers and duties. The office was continued until 1904, when by chapter 40, passed March 8, it was abolished and the office of commissioner of education was created.

merit — and at the same time afford aid to our colleges in a manner free from the objections which exist in the minds of many, to giving the public funds to institutions which are supposed to benefit only a small portion of the community.

The Asylum for the Training and Education of Idiotic and Imbecile Children, has during the last year, continued its successful progress, and has invigorated the hopes and confirmed the expectations of those citizens who had faith in the power of discipline to develop the faculties of this hapless class. Their gradual advance from the lowest degrees of imbecility, to a capacity for self control and for the acquisition of the ordinary branches of an English education, has been as remarkable as it has been encouraging.

Numerous applications from every quarter of the State, for the admission of pupils, have been unsuccessful, in consequence of the want of room for their accommodation. The appropriation made at the last session of the Legislature for the erection of a suitable building, was found to be inadequate for the purpose; and although the trustees have procured a site, they have very properly abstained from entering into further engagements that would involve expenditures beyond the amount directed by the Legislature. In their annual report they will present a full account of their proceedings and of the condition of the asylum; and the urgent reasons for such an increase in the appropriation as is necessary to complete an edifice, with its appropriate appurtenances, adapted to the object and commensurate with its importance.

I cannot forbear commending to your most favorable consideration this excellent charity. The strict economy, prudence, fidelity and respect to legislative direction, with which its affairs have been managed, furnish satisfactory assurance that no more will be asked than is really necessary, and that what may be granted will be faithfully and judiciously applied.

There are at this time 446 patients in the State Lunatic Asylum at Utica, and 556 in the Lunatic Asylum on Blackwell's Island. It appears by the reports which have been submitted to me, that the efforts to improve the condition of this unfortunate class of persons have been attended with the usual degree of success. I renew the recommendation contained in my message of last year, for the establishment of another asylum in the western part of the State. The accommodations at the asylum on Blackwell's Island and at Utica, are insufficient for the present number of inmates; and admission has been refused to a large number of persons.

There are 111 pupils in the New York Asylum for the Blind, and 55 persons afflicted with the loss of sight employed in teaching in the different departments, or as operatives in the manufactories attached to the establishment. It not only affords instruction to pupils, but by the employment which it gives in its workshops supports a large number of blind persons, some of whom have families dependent upon them.

The directors of the Asylum for the Deaf and Dumb, have determined to remove it to a more favorable site, on which they are erecting buildings which will contain ample accommodations. This institution continues to fulfill the objects of its benevolent founders. It now contains 280 pupils, 192 of whom are beneficiaries of the State of New York. In addition to the intellectual instruction which they receive, they are also taught trades, which will enable them to support themselves.[2] It is unnecessary for me to add any words of commendation of the asylums for the insane, the deaf and dumb and the blind. Their successful

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2 Chapter 272, passed April 15, made all indigent deaf and dumb persons, between twelve and twenty-one years of age, eligible to admission into the New York Institution for the Instruction of the Deaf and Dumb, provided the parents or guardians of such persons had resided in the State three years. The institution was to receive $150 annually for each person so instructed.

management for a long series of years has firmly established them in the public favor and confidence.

The report of the Commissioners of Emigration, shows that the number of alien passengers who arrived at New York during the year 1852 was	300,992
The number who arrived from the 1st of January to the 1st of December, 1853, was.....	266,962

The arrivals during the month of December last, will probably swell the number for the year to about 300,000. Of the immigrants who arrived here last year, 118,611 were from Germany, 118,131 from Ireland.

The last Legislature added 50 cents to the commutation fees for each passenger. This has enabled the Commissioners to pay to the various counties in the State the balances remaining due to them on the 1st of January last, amounting in the aggregate to $55,000; also to reimburse to them the amount of their bills rendered to the 1st of November, 1853,—making the total payments to the counties last year about $140,000.

There has been a fearful loss of life by the cholera on board of a number of the emigrant ships which have arrived in the port of New York within the last three months. While we are unable to account for the causes of this mysterious pestilence, there is no doubt that its ravages are increased by the want of proper ventilation and cleanliness. Many of these ships bring over from Europe on each passage more than 1,000 persons. Every consideration of humanity demands that some measures should be adopted for the preservation of the lives of those who are subjected to the sufferings incident to these crowded and pestilential ships. Not only are those who are seeking our shores swept away in appalling numbers, but there is reason to apprehend diseases will be introduced which will

spread pestilence and death along the lines of our canals and railroads.

I earnestly invite your attention to this subject, and to the correction as far as possible of the abuses and wrongs which are practised upon the vast multitude of strangers who are thrown upon our shores under circumstances which expose them to the arts of heartless, profligate and designing men.[3]

The Western House of Refuge for Juvenile Delinquents contains at this time 207 inmates, although it is designed to accommodate only 200. During the past year 102 have been received and 60 have been indentured as apprentices or otherwise provided for. This institution will need additional pecuniary aid to enable it to provide for the increased number of commitments. It is also important that its managers should be able to classify the inmates and separate the more youthful and less vicious from hardened offenders.

About 400 youthful criminals of both sexes have been admitted into the House of Refuge in the city of New York, and about the same number have been indentured. The number received since its establishment, now reaches 6,000, the greater part of whom have been rescued by its instrumentality from lives of misery, degradation and crime. When the new buildings on Randall's island are completed they will accommodate 1,000 children.

The Western House of Refuge is under the charge of managers appointed by the Governor and Senate; that in the city of New York is under the management of the society for the reformation of juvenile delinquents. Both of them are controlled by and receive the care of enlightened and philanthropic men, who fully appreciate the im-

[3] The Legislature adopted a concurrent resolution in January, requesting Congress to investigate the condition of emigrant vessels, and enact laws which might be deemed necessary to secure the health of passengers on such vessels.

portance of rescuing youthful offenders, and of making them virtuous and useful citizens. The results of their labors are of great interest and importance. The histories of those who have been restrained, educated and aided by them afford eloquent and touching testimonials to their value. Every consideration of benevolence, as well as a due regard for the safety of society demand that they should be liberally sustained. The high character of the managers, and the motives which have induced them to assume the duties of their positions give ample assurance that any assistance you may give to these establishments will be applied with wisdom, economy and fidelity.

The number of convicts confined in our State prisons are:

At Sing Sing	913
Clinton	191
Auburn	756
Total	1860

Of these convicts 101 are females.

Statements showing the financial condition of the prisons are contained in the reports which will be submitted to you during the session of the Legislature. I am advised that a contract has been made for the employment of the laborers in the Clinton prison, which is advantageous to the State, and will lessen the expense of maintaining that establishment. The receipts for the labor of the convicts at the Auburn prison, will be diminished in consequence of the sickness of many of them with the smallpox. This disease is now entirely eradicated.

It is a matter of surprise that the discipline of our prisons is so well maintained and their affairs so successfully conducted under our present defective system. The management of these institutions demands mental and moral qualities of the highest order. And these are inade-

quate without the advantages of long experience in the performance of the complicated and difficult duties of controlling depraved men — of maintaining discipline and order without undue severity — and of elevating them to the condition of useful and respectable members of society. It is impossible that the requisite experience can be obtained under our present system, which affords an insufficient compensation to the officers, and renders the tenure of their places dependent upon political changes. While it is true, that under our form of government official stations should ordinarily be held by those who reflect the sentiments of the people with regard to the measures and policy of government, our charitable institutions, and those designed for the punishment of crime, should be placed beyond the reach of political influences.

Fortunately, our public establishments for the relief of bodily or mental infirmities, and for the reformation of juvenile delinquents, have by common consent been left under the charge and control of capable and philanthropic individuals, without respect to their political sentiments. Their successful management and the liberal support which have been accorded to them under the influence of public sentiment, have been just occasions for State pride. The same principles of freedom from party action which have rendered our asylums for the insane, the deaf, the blind and the idiotic, and our houses of refuge for juvenile offenders, so successful, should be applied to our prisons and penitentiaries. Humanity, justice and policy all dictate that our prisons which are designed to punish crime, to reform offenders, and to protect society from violence and outrage, should be rescued from the destructive influences of party spirit and partisan prejudices.

It appears from a report submitted to the last Assembly, by a legislative committee appointed in 1851, that the average length of time for which the wardens and agents have held their offices since 1834 does not exceed eighteen months,

and that the State has had the benefit of less experience in the performance of the delicate, complicated and important duties of these stations, than is deemed necessary to the successful conduct of the most simple business pursuit of life. It is creditable to those who have had the management of the prisons, that they have been enabled to maintain discipline among the convicts, and to keep them profitably employed for the State.

I suggest the propriety of allowing to convicts as a reward for industry and good conduct, some portion of their earnings for the benefit of themselves or their families. This would be calculated to animate them with hope — to create habits of foresight and prudence, and by enabling them to assist their families, would cultivate the better instincts of their nature. It would also give them, at the expiration of their terms of imprisonment, some means of support, until they could overcome the difficulties of obtaining employment. In numerous instances, discharged convicts are led to the commission of crime by the poverty and want consequent upon the prejudices which exist against them. Humanity and policy alike dictate that every encouragement should be afforded to these unfortunate persons to retrieve their past errors.[4]

The condition of the jails in this State should be made the subject of thorough investigation. Many of them are nurseries of crime. Criminals are crowded together without regard to age, character or the nature of their offences.

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[4] A plan of commutation in relation to prison labor was established in 1817, but was abrogated the next year. Governor Seymour's suggestion was renewed by Governor Morgan, in 1862, and the Legislature that year adopted a plan of commutation for good behavior, and also authorized the payment of a sum of money to a prisoner on his discharge.

The Legislature of 1854 passed an act, chapter 223, providing for a commission, to be appointed by the comptroller, to investigate prison affairs and report at the next session. The bill, which here became a law, was vetoed by the Governor, and was passed over his veto. See special message of April 14.

Without employment and their minds occupied by topics of vice and crime, they are rendered mentally and morally depraved. This miserable system is not even commended by considerations of economy. The Albany Penitentiary which receives the convicts of a certain class, from a number of counties, is an object of interest to the philanthropic of other States and of other lands, for its thorough discipline, its perfect arrangements, and its skilful management. It is not only self-sustaining but it yields a revenue beyond its expenses. It is but necessary to contrast this institution with most of the jails of our State to show that benevolence, policy, and economy dictate a thorough reformation in their arrangements and management. The average term of confinement in the Albany Penitentiary is but three months. The inmates are of that inferior and degraded class who are committed for petty acts of vagrancy and crime. Their employment is confined to a simple and single branch of hand labor, and yet under skilful and experienced management they are made to support themselves, pay the salaries of the officers and attendants who control them, and the expenses incident to the maintenance of a commodious edifice and ample grounds.

The convictions for different offences during the past year will exceed 7,000. Of this number above 600 have been sentenced to our State prisons. It appears from an examination of convictions for a series of years, that the increase of crime does not vary from the proportional increase of our population.

I recommend a modification of our criminal laws which will give judicial tribunals more power than they now possess with regard to the terms of confinement in our prisons. The distinctions between different grades of crime can be preserved without compelling our courts to inflict sentences of great severity upon offences of a comparatively light and venial character, because technically they come within

the statutory definition of certain offences. By our present laws our courts cannot sentence a criminal who is convicted of burglary in the first degree, or for highway robbery, for a term of imprisonment less than ten years, yet in many instances, these offences are committed under circumstances far less criminal than acts which are punished by two years' confinement in our prisons or a shorter period in the county jails. The statutory provisions, which, in many instances, compel the courts to inflict more severe punishments than they deem just, interfere with the certainty of the enforcement of the laws, and lead to numerous applications to the Executive for pardon. Experience has shown that to restrain crime reliance must be placed upon the certainty rather than upon the severity of punishment. The courts which try criminals, are far more competent to determine upon the proper punishment to be inflicted than the Executive can be. If the sentences are controlled by the arbitrary provisions of the statute, the Governor can have no assurance that they are in accordance with the judgment of the courts which convict the criminals. I can see no danger in this modification of our criminal law, as the judges who hear all the testimony in the case are less liable to be misled than the Executive who hears only the petitions and arguments in behalf of the criminal. The exercise of the pardoning power, even in cases where it is demanded by considerations of justice, is always attended with great evils. As the reasons which induce the granting of pardons are not made known to the public, it creates the belief that the penalties of the law may be evaded through the intercession of friends or from considerations of sympathy. Although the number granted within the last ten years has not been as great in proportion to convictions as before that period, yet the number of applications and the difficulties of discharging this duty have greatly increased. The present cheapness and facility of communication, induce the friends of prisoners to make

personal and repeated applications to the Executive under circumstances both painful and embarrassing.

The enrolled militia of the State number about 300,000. The Constitution requires that the "militia of the State shall at all times hereafter be armed and disciplined and in readiness for service."[b] It also makes ample provision for its organization and the appointment of necessary officers. The long period of peace enjoyed by our country, and our freedom from domestic disturbances, have led us to regard our militia system with too much indifference. Few are aware of the extent to which it protects our citizens in the enjoyment of their property and the security of their persons.

The Constitution of the United States declares that, "a well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed."[c] An efficient military organization is of constant service in the preservation of good order. Although few instances occur where they are called upon to quell resistance to the laws, yet they serve at all times to overawe turbulent or disorderly members of society. In addition to the enrolled militia, many companies and regiments have been formed which are well uniformed and thoroughly disciplined. They number nearly 20,000 men, and without subjecting the State to any expense they constitute an important part of its executive power. Composed of intelligent, active and respectable men, who have an interest in preserving the good order of society, they may be relied upon at all times to suppress tumults and to enforce obedience to the constituted authorities.

At the last session of the Legislature a commission was appointed to reduce the militia laws to a system which would render them intelligible and more easily enforced.

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[b] Const. 1846, art. 11, § 1.

[c] U. S. Const. 2d am.

The report submitted by the commissioners was not adopted by the Legislature. I commend it to your favorable consideration, as important to produce a thorough and efficient organization of the militia and to carry out the requirements of our State constitution.[5]

I am happy to state that great progress has been made in the adjustment of the difficulties in relation to manorial titles, which have agitated some sections of our State for many years. The legal rights of the landlords and tenants have to a great extent been determined by our judicial tribunals, and the principal obstacles to negotiation between the parties interested have been removed. They have common interests in settling these difficulties and in relieving themselves from the pecuniary, social and moral evils which have been inflicted on them and on the State at large by prolonged controversies. Since the questions respecting titles have been decided, in numerous instances the tenants have availed themselves of the abundance of money and the high prices commanded by the productions of the soil, to secure the full ownership of their lands upon favorable terms.

But few instances of resistance to legal process have recently occurred. An outrage having been committed in the county of Albany upon a citizen while in the discharge of an official duty, a resolution was adopted by the last Assembly requesting me to communicate to them "if any reward had been offered for the arrest of the offenders, or what measures had been taken for their apprehension, and whether in my judgment any further legislation was necessary to prevent the recurrence of such outrages, and for the better enforcement of the law."

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[5] A general militia act, chapter 398, was passed at this session, and became a law, April 17. It provided for the reorganization of the militia. Section 15, relating to exemptions, was sustained in People ex rel. Cunningham v. Roper (1866), 35 N. Y. 629.

Having advised the Assembly what measures had been taken to arrest the offenders, I stated my reasons for not offering any reward for their apprehension, and my opinion that no legislation was necessary to secure the better enforcement of the law when resistance is made to process. In many instances the offer of rewards for the apprehension of criminals, creates an impression in the minds of those required to execute process, that they are, in some degree, relieved from their duty, as it assumes that the ordinary means of enforcing the law are insufficient.

The statutes of the State confer upon the sheriffs of the several counties the most ample powers to discharge the duties imposed upon them. They are authorized, when they apprehend resistance will be made to the execution of the process, to command every male inhabitant of their respective counties, or any military companies in such counties, to assist them in overcoming such resistance. And every person who shall refuse to assist is guilty of a misdemeanor, and is subject to fine and imprisonment. If the power of the county is not sufficient to enforce process, the Governor can order such military forces from other counties as shall be necessary. The statute also provides that "Whenever the Governor shall be satisfied that the execution of civil or criminal process has been forcibly resisted in any county or counties of this State, by bodies of men, or that combinations to resist the execution of such process by force, exist in any such county or counties, and that the power of such county or counties has been exerted, and is not sufficient to enable the officer having such process to execute the same, he may, on the application of such officer or of the district attorney of such county, or one of the judges of the county courts thereof, by proclamation to be published in the State paper, and in such other papers as he shall direct, declare such county or counties to be in a state of insurrection; and may order into the service of the State such number and description of volunteer or uni-

form companies, or other militia of this State as he shall deem necessary, to serve for such term as he shall direct, and under the command of such officer or officers as he shall think proper."

The powers conferred by the statute upon the Governor and the sheriffs of counties, are so ample, that, in my judgment, a failure to enforce the law, in cases of resistance, justly subjects them to censure. The grant of extraordinary powers imposes extraordinary responsibilities, and nothing short of the exertion of every power vested in the sheriffs, can relieve them from censure, or prevent their removal from office. Neither will a formal compliance with the law be deemed sufficient. The efforts to preserve the public peace, and to bring offenders to justice, must be earnest, energetic and persevering. The Constitution of New York requires "that the Governor of the State shall take care that the laws are faithfully executed."[d] This duty I shall rigidly perform, particularly where the rights of persons and property are endangered by violent or lawless proceedings.

It is due to the sheriff of the county of Albany to say, that in the case referred to, his duty was performed vigorously and successfully, and the alleged offender was arrested.

The number of banks and banking associations in the State of New York is 324. There were 48 new institutions established last year, and 82 since December, 1851, showing an increase of one third within two years. The additional capital created last year, was $14,484,859, swelling the sum invested in banking to $76,692,075. This extraordinary increase is far beyond the proportionate growth of the business of our country, and it occurs at a time when the importations of gold from California, and other sources, meet a portion of the demand for a circulating medium. A great

[d] Const. 1846, art. 4, § 4.

number of new banks have recently been created in the different states of the Union. This extraordinary expansion of our currency, indicates a highly speculative condition of financial affairs, which, unless checked in due season, will terminate in disastrous revulsions.

I deemed it my duty to return to the last Legislature, with my objections to its becoming a law, a bill which proposed to admit the stock of cities under certain restrictions, to be received by the Superintendent of the Banking Department, as securities for the redemption of bills for circulation.

The Constitution of New York makes it the duty of the Legislature to restrict the power of municipal corporations to borrow money, contract debts and loan their credit.[e] If this bill should become a law, it would cause a demand for the stocks of our cities, add largely to their value in market, and create an inducement on the part of municipal corporations to incur debts, and is therefore clearly in conflict with the purposes of the Constitution.[6]

It is alleged in favor of allowing the debts of cities to be used as a basis for banking, that the stocks of this State and of the United States, cannot be obtained unless a large premium is paid for them. It is true these stocks command high prices in the money markets of the world, but they sell for no more than they are intrinsically worth. They can be obtained at their market value, and although they pay directly but small interest to the holders, the profits of banking at this time are so great that they more than compensate for any loss of interest on the securities pledged for the redemption of their notes. It is evident that these profits must be limited either by judicious restraints or by a multiplication of banks, which will endanger our whole financial system. No better or safer plan can be devised

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[e] Const. 1846, art. 8, § 9.

[6] See 1853, special message of June 1, for the veto of the bill amending the banking law, *ante*, p. 700.

than that which requires the highest and best security for the bill holders, and it is no argument in favor of cheaper securities that they will facilitate the establishment of new banks, and thus inflate the currency of the country. Although the increase of business makes more capital necessary in conducting it, a large proportion of the indebtedness to the banks at this time, and the great amount of bills in circulation, are the results of speculative rather than legitimate business demands.

The stocks of this State and of the general government have a value in the commercial markets of the world, and will therefore furnish a security for the redemption of the bills at periods when we suffer from financial revulsions; while the stocks of our cities, having only local values and markets, will be more affected by the monetary condition of the country. If our banking laws are modified to admit of the use of cheaper and inferior securities, they will of course be selected. I deem it exceedingly hazardous at this period of speculative excitement and pecuniary expansion, to diminish the security of the bill holder, or to increase the motives for the establishment of banking institutions, which are already multiplying to an unprecedented extent.

If the Constitution of the State shall be amended for the purpose of borrowing money to be expended upon the canals, there will be an additional amount of State stocks issued, which can be used under our present laws as a basis for banking. This will supply the demand for these securities, while the treasury of the State will be benefited by the additional premium on the stocks, which the demand creates.[7]

I recommend a modification of the usury laws in certain cases. They are designed to protect the improvident or

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[7] Chapter 72, passed March 21, authorized savings banks to deposit surplus funds in trust companies. Chapter 242, passed April 15, contained several administrative amendments to the banking law of 1838.

unfortunate from the exactions of the grasping and sordid, and, in numerous instances, they serve a valuable purpose. But the severity of these laws is frequently injurious in our larger cities. The city of New York is now the financial center of the United States, as it will ultimately become that of the commercial world. The legal restraints which compel the parties to resort to indirect measures in their monied transactions, are attended with great evils and embarrassments to commerce. It is believed our present usury laws may be modified in certain cases, without destroying the protection they are designed to afford against extortion and oppression.

Apprehensions have been expressed by those engaged in the commerce of the city of New York, that the encroachments by piers, which have been made upon the harbor of that city, are calculated to create dangerous obstructions — to diminish its convenience, and to make it inaccessible to large vessels. The subject is one demanding your attention, as it affects not only the interests of that city, but of the entire State and country. The control of the harbor of New York, and the title to its expanse, belong to this State and New Jersey. It is the terminus of our great system of internal improvements — the point from which the productions of our country are sent to foreign or domestic markets. The people of the State are deeply interested in preserving its convenience and security, for the purpose of accommodating the commerce of our State and nation. I recommend the appointment of a proper commission, to be composed of capable, scientific, and impartial men, to investigate this subject, and report to you the results of their examination.[8]

In my annual message to the last Legislature, I called the attention of that body to the embarrassed state of our

[8] Bills intended to carry into effect the Governor's suggestion as to encroachments on New York harbor were considered in both houses, but no bill was passed by both.

canal finances, and of our public works. At that time, there was estimated to be due to contractors, and for land damages, more than $600,000. For a large share of this amount, drafts had been made upon the Auditor, and protested for the want of funds. This was alike unjust to the public creditors, and disreputable to the State.

For the purpose of paying the debts due to the contractors, to prevent a suspension of labor on our unfinished canals, and to secure their completion, I urged the Legislature to provide for the payment of the protested drafts and for other pressing demands, and thus relieve the surplus revenues from the liens which these liabilities created upon them; I also advised appropriations for immediate improvements on the Erie canal, and the adoption of measures to secure the completion of our unfinished public works, by the establishment of a system, which would secure the application of at least $1,000,000 annually, for that purpose. I suggested that this sum could be secured either by taxation or by loan, or by an amendment to the Constitution.

The condition of our unfinished canals made it very important that immediate appropriations should be made for their benefit. The Genesee Valley and Black River canals, were nearly completed, and small expenditures would bring into use long lines of navigation.

I also expressed an apprehension, that there would be a disastrous diversion of commerce from the Erie canal, unless improvements should be made in its channel, to facilitate the passage of boats, and enable those designed for the enlargement to be introduced, and supply the want of vessels occasioned by the decay and destruction of those heretofore in use.

On the 5th of April last, as no measures for the relief of our canals or the contractors, had been adopted by the Legislature, and as its session was drawing to a close, I sent a communication to the Senate and Assembly, calling

their attention to the reports of the Canal Commissioners and the State Engineer, and urging that the immediate completion of the improvements which they recommended, was required by the interests and for the security of the commerce of the Erie and Oswego canals. I also advised appropriations for the Genesee Valley and Black River canals.

The Legislature having adjourned without enacting laws necessary for the preservation of the faith of the State, and essential to the public welfare, or making provision for the continuance or completion of our canals, I exercised the power entrusted to me by the Constitution, and convened them again on the day after their adjournment.[f] I advised the continuance of the session for a few days "while important subjects of legislation were yet familiar to them, which would enable them to perfect measures demanded by the public good, and thus prevent great injury to the honor and interest of the State, and save the necessity of renewed examination and discussion at a future day."

Among other subjects, I again called their attention to the condition of our public works, and the embarrassment of their finances. I urged the importance of making immediate appropriations to secure essential improvements in the Erie and Oswego canals, as their commerce would be seriously obstructed, unless the improvements suggested in my annual message, and recommended by the Canal Commissioners and the State Engineer, in their reports to the Legislature, should be made at the earliest practicable period. These improvements would in no degree conflict with their proposed enlargement; on the contrary, they would hasten that result by increasing our domestic commerce, cheapening transportation, and augmenting our revenues.

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[f] Const. 1846, art. 4, § 4.

I also urged the great injustice which would be done to the citizens living along the unfinished portions of the Genesee Valley and Black River canals, unless immediate appropriations should be made toward their completion. And I commended to their favorable consideration an amendment to the Constitution, reported in the Assembly, which would enable the Legislature to borrow annually, for six successive years, a sum which, with the surplus revenues, would amount to $1,500,000.

Prolonged discussions were had upon these subjects. A bill was ultimately passed increasing the State tax three-fourths of a mill on each dollar, and applying $621,467.47 to the payment of protested drafts for the amount due to contractors and for land damages. The sum of $650,000 was appropriated to the work on the Erie canal enlargement, the Black River, Genesee Valley, Cayuga and Seneca, Champlain, and Crooked Lake canals. The conflicting views between the two branches of the Legislature were harmonized by a committee of conference, and an amendment to the Constitution was passed, which requires the Legislature to appropriate annually for four years, a sum not exceeding $2,250,000, for the enlargement of the Erie, Oswego, Cayuga and Seneca, and the completion of the Black River and Genesee Valley canals, and for the enlargement of the locks on the Champlain canal.

If this amendment is adopted, the faith of the State will be pledged for the payment of any debt created under it; the stock will therefore command a premium of about twenty per cent. more than was obtained for the canal revenue certificates issued under the law of 1851, or than can be obtained for stocks predicated solely upon the surplus revenues. It is also provided that the contracts for work and materials shall be made with those who shall offer to do or provide the same at the lowest price, with adequate security for their performance.

As the proposed amendment was agreed to with re-

markable unanimity, by the members of the last Legislature, representing all portions of our State, and as a measure of compromise between conflicting views and sentiments, I recommend its adoption by you, and its submission at an early period. If this is done and the people approve of the amendment, the Legislature can, at its present session, pass the laws necessary to carry out its requirements. The condition of our canals renders it exceedingly important that a fixed and definite policy be at once adopted with regard to them.[9]

I also earnestly recommend the measures for the temporary improvement of the Erie and Oswego canals, which I urged upon the attention of the last Legislature. They can be made before the opening of the navigation next spring. They will cheapen transportation, facilitate the passage of boats now in use, and induce the construction of new ones of the enlarged size, and thus prevent the continuance of the diversion of commerce from our canals which was pointed out by the Commissioners in their last annual report to the Legislature. This diversion of commerce is doubly disastrous. It strengthens rival and competing routes, while it diminishes the revenues applicable to the completion of our public works. It increases the liability of a resort to direct taxation to pay our present indebtedness or that which may hereafter be created. It is of great importance to save the revenues from the injury which would be inflicted upon them by an insufficiency of boats to transport our domestic commerce. It appears from the report of the State Engineer that only about $500,000 is required to secure the advantages of a great increase in the capacity of our canals, and to avert the evils with which we are threatened unless these improvements are made. Of this amount, $200,000 would be so applied as to advance the completion of the enlargement. The balance

[9] The canal amendment (art. 7, § 3) was again adopted by the Legislature and approved by the people at the November election in 1854.

of $300,000, which would be temporarily applied, would be less than one year's interest on the debt which it is proposed to create, while its application would add at least one half to the capacity of the Erie and Oswego canals.

It appears from investigation that the number and tonnage of boats navigating our canals were less last year than in 1848. This alarming result demonstrates the necessity for adopting immediate measures to admit of the new and enlarged vessels. Otherwise the cost of transportation will be increased and business diverted into other channels.

The Canal Commissioners in their last annual report state that "The trade during the past season has been seriously embarrassed for the want of breadth in the canal at many points to allow the largest of the old class of boats to pass each other loaded, and without the improvements, if the enlarged boats are brought into use, it is certain that these embarrassments will be multiplied."

"This work can be done at a moderate cost, so as to allow the enlarged boats, not drawing more than three and a half feet of water, to pass each other."

"The State has suffered largely in her revenues for the last three or four years, from the uncertainty existing as to the future condition of the canals; and as a direct consequence, the aggregate tonnage of the boats has been inadequate to do the business offered for transportation. For the want of means to do the business promptly, freights have advanced for the last two years, in the face of a reduction of tolls, and a large trade of many hundred thousand tons has thus been forced into other channels."

"Boats of the old size have not been built in sufficient numbers to meet the wants of the trade, because of the public expectation that the canal would soon have capacity for larger boats, rendering those of the old size comparatively useless."

The necessity for an improvement in the channels of the Erie and Oswego canals, is made more urgent by the fact

that during the last summer a line of enlarged locks between Buffalo and Albany was brought into use, and the new locks on the Oswego canal will soon be completed. Boats of the enlarged size have already passed through the canal from Buffalo, carrying 130 tons, and a great number of this class of vessels will be built in the course of the year. If they are placed on the canal in its present condition, they will injuriously obstruct its commerce. It was proposed in the first instance merely to lengthen the remaining old locks upon the Erie canal, so that they would admit of the passage of boats twenty-eight feet longer than those now in use. My predecessor, in his message to the Legislature in 1851, states that "the lengthening of the locks rendered a corresponding enlargement of the sections more necessary than before." These locks have not only been lengthened, as was contemplated at that time, but they have also been widened, and unless the channel is improved at once, the enlarged boats will not be able to pass each other on most parts of the canal. The loss to the revenues, which will be occasioned by the detention of boats and the diversion of commerce, will exceed in a single year the expense of making the required improvements.

I also recommended appropriations to complete the Black River and Genesee Valley canals. Only a small amount is required for the purpose, and I feel that it is due to the citizens interested in these works, that they should immediately be brought into complete use. The appropriations made to remove obstructions from the channel of some of the rivers in the northern part of the State, have increased the commerce of the canals, and have proved beneficial in other respects. I commend this class of improvements to your favorable consideration.

The opinion is entertained by many that the commerce between the western and the Atlantic States is so vast, and that the capacity of the enlarged canal when completed will be so great, that it is unimportant how much is expended

upon it. This mistaken impression is calculated to do great mischief. The commerce of the western States is indeed of immense value and extent, and it is difficult to estimate its increase when the population of the valley of the Mississippi shall be doubled. No one can be more deeply impressed than I am with the importance of this carrying trade to the State of New York. It is one of the great sources of our prosperity. It creates the business and wealth of our commercial emporium, and makes it the center of the financial transactions of the United States.

I believe the great natural advantages of New York, arising from its geographical position, and its control of the natural avenues of trade between the valley of the Mississippi and the east, have not heretofore been appreciated. Neither do I undervalue the enlargement nor the advantage it will afford to commerce. The honor and the interest of the State of New York require its completion and that of the other public works. But it must not be supposed that in their management the principles of economy can be violated with impunity. Any system of favoritism toward individuals or localities, any neglect to secure loans upon the most favorable terms, and to expend money in the most judicious manner will be attended by calamitous results. The canals belonging to the State of New York, no longer monopolize our internal commerce. Hereafter they must compete not only with rival routes in other States, and that through Lake Ontario and the St. Lawrence, but also with the enterprise, energy and skill of its own citizens.

The reports of the railroad companies will show an immense increase of their receipts for the transportation of freight. Many entertain the opinion that they will in a few years, to a great extent, divert commerce from the canals. I do not concur in these views; but if they should prove to be true, the canals would be of great value in controlling the rates of transportation. While they are in

good order, and under judicious management, combinations cannot be successfully formed to the detriment of the public interest.

Our public works require constant watchfulness against unnecessary expense of construction and management. Every dollar unwisely expended, creates an injurious tax upon their commerce. While moderate expenditures, judiciously applied, will finish our system of internal navigation, unless rigid economy is exercised on the long lines of our unfinished canals, the amount proposed to be raised by the amendment to the Constitution, will be expended without effecting their completion, leaving them encumbered with an increased debt, and heavier charges upon them for interest and sinking fund accounts.

The history of our canals prior to 1835, and since that period, show how much can be accomplished by an economical and judicious application of moderate sums of money, and how little is effected by profuse expenditures.

Before the year 1835, the State of New York made 656 miles internal navigation, connecting the Hudson River with the Erie, Ontario, Cayuga, Seneca, and Crooked lakes, at a cost of only $11,652,652.96. The Erie canal connecting the Hudson River with the great lakes, cost $7,143,-789.86. The successful completion of the public works in 1835, and the extinguishment of the debt created for their construction was a just cause for congratulation. None of the works commenced since that time have been finished, although more than $26,000,000 have been expended upon them. These facts show that the efficiency of appropriations depends less upon their amount, than upon the wisdom, economy and fidelity with which they are applied.

When in 1835, the State officers advised the enlargement of the Erie canal, they stated that the "net proceeds of the tolls for 1835, 1836, and 1837, would probably be sufficient to pay the balance of the debt, and meet the disbursements on the contracts for doubling the locks;" and "after

that period the net proceeds of tolls would be sufficient to meet the disbursements necessary for improving and enlarging the canal, without having recourse to new loans for that purpose." If their policy had been adhered to, our canals would now be completed. Beyond keeping them in repair, since the old debt was paid, there has been received for tolls, about $32,000,000, the whole of which might have been applied to our public works, if we had borrowed no money. This amount would not only have completed them but they would have been saved from any suspension, for the State would have been beyond the reach of financial revulsions, while it expended only its ample surplus revenues. Their disbursements, in periods of pecuniary distress, would have relieved our citizens by giving employment to labor, and our State would have been saved from the discredit of borrowing money in competition with its own citizens; of delaying payments to its contractors, or compelling them to take at par its stocks, when they were selling in market at a discount of 10 or 15 per cent.

In contrast with the condition which our canals and their finances would have shown if we had adhered to the views of the State officers in 1835, we find that no public work commenced since that time has been finished, and our canal debt now amounts to $17,000,000.

The surplus revenues of our canals, devoted by the Constitution to their completion, were reduced, for the fiscal year ending September 30, 1852, to $280,000, and for the fiscal year ending September 30, 1853, to $220,000. In one year from the 1st of June next, the Constitution requires that the additional sum of $400,000 from the revenues, shall be applied for the extinguishment of the existing debt. Unless there shall be a large increase in the revenues, or the expense of keeping the canals in repair shall be materially lessened, there will be no money applicable to them, or in case the proposed amendment to the Constitution is adopted, to the payment of interest on the new debt.

If the law of 1851 had not been declared unconstitutional, it would have failed in its object. The loans to be made under it were predicated solely upon the surplus revenues of the canals. The revenue certificates, which were sold to the amount of $1,500,000, produced in market less than one per cent above par, while the stocks of the State, bearing the same interest and payable about the same time, were selling at a premium of 16 per cent. In that year the surplus revenues of the canals amounted to $900,000. They have since fallen to $200,000, and in a little more than a year from this time the constitutional provisions will absorb this surplus, and $200,000 annually in addition.[s]

The failure to dispose of the revenue certificates, would have rendered it necessary to suspend the works under that law, and our canals would have been burdened with an increase of indebtedness, without affording any additional facilities to navigation. The proposed amendment to the Constitution guards against any failure to borrow the amounts needed, as the bonds will be based upon the credit of the State, and even should the surplus revenues be insufficient, the holders will be assured of the prompt payment of their interest, and the ultimate payment of the principal. If the stocks of the State continue to bear the premiums which they now command in market, the saving by having them based upon the public security, instead of limiting them solely to the surplus revenues, will amount to about $2,000,000.

The condition of our canals, at this time, demands expenditures upon them beyond the amount of their surplus revenues. If the improvement which I have suggested, shall be made at once, and any further diversion of their business prevented — and if the money which shall be applied to their completion shall be judiciously expended, and stringent measures are adopted to diminish the expense of

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[s] Const. 1846, art. 7, § 3.

keeping them in repair, their net revenues may be so far increased as to prevent the necessity for any resort to taxation on account of our present indebtedness, or that which we may create for the benefit of our unfinished public works.[10]

The last Legislature adopted efficient measures to relieve the General Fund from its embarrassments, and to increase its resources and revenues. In the fiscal year ending September 30, 1852, the income of this fund was $188,343.53 less than the charges upon it. The deficiency for the fiscal year ending September 30, 1853, was $230,-869.43, making an aggregate indebtedness at that date of $419,216.96. To pay this indebtedness, and to relieve the public creditors who held demands against the treasury for work on the canals, the State tax was increased from one-quarter of a mill to one mill on the dollar for the fiscal year ending September 30, 1854, and to three-quarters of a mill for the year ending September 30, 1855, and to one-half mill for each year thereafter. Of the proceeds of the mill tax, $140,000 is appropriated to the payment of the contracts under the canal law of 1851, which was decided to be unconstitutional. $466,467.47 is appropriated to the payment of drafts drawn upon the auditor and protested

[10] By chapter 16, passed February 15, the canal commissioners were directed to adopt measures to bottom out the narrow portions of the Erie, Oswego and Cayuga and Seneca canals so as to make them available for use by the larger boats drawing three and a half feet of water, and the act appropriated $115,000; $100,000 for the Erie, $10,000 for the Oswego and $5,000 for the Cayuga and Seneca canals. Chapter 329 provided for the enlargement of the Erie, Oswego, and the Cayuga and Seneca canals, and for the completion of the Black River and Genesee Valley canals, and to provide for the payment of certain canal revenue certificates. The act carried appropriations amounting to $3,750,000, and required the enlargement of the Erie, Oswego and Cayuga and Seneca canals to a width of seventy feet and a depth of seven feet, except where greater dimensions were deemed necessary for a supply of water.

Chapter 330, passed April 15, appropriated various large sums for canal purposes, including the canal debt, management, administration, repairs and improvements.

for want of funds, and for other debts, making a total of $606,467.47 which will be paid by taxation this year for canal purposes.

The Constitution forbids the creation of any State debt, except in certain specified cases, yet it appears that a debt for canal and General Fund purposes has been incurred, amounting to more than a million of dollars, in direct conflict with this provision.[b] To relieve the contractors and other public creditors, and to save the State from discredit, the last Legislature was compelled to impose a heavy tax upon the people. To prevent the unconstitutional creation of debts hereafter, I recommend a law prohibiting any public officer from continuing expenditures or drawing drafts when appropriations have been exhausted, or where there are no funds applicable to their payment.[11]

The law designed to pay the debts above mentioned, also increases permanently the State tax imposed for the benefit of the General Fund revenues from one-quarter to one-half mill on the dollar. This will make the amount of the annual tax paid for the support of the government about $600,000. This sum, with other revenues, will be ample for that purpose, if judicious economy is used, unless the annual contribution of $200,000 from the canal resources is withdrawn under the operation of the proposed amendment to the Constitution. If this should be done, it will be necessary to supply the deficiency by further taxation. I refer you to the Comptroller's report for valuable suggestions respecting the finances of our government.

The last Legislature, with entire unanimity, adopted resolutions proposing an amendment of the Constitution, providing additional guards against bribery at elections. Its purpose will effectually commend it to your favorable

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[b] Const. 1846, art. 7, § 12.

[11] This subject was included in an amendment to the state finance law passed in 1899, chapter 580, which prohibited expenditures in excess of available appropriations.

consideration. It should be submitted to the action of the people at the same time with the proposed amendment in relation to the canals.

During the past year intemperance has been a prominent topic of public discussion and interest. It is justly regarded as a fruitful source of misery, destitution and crime, and its effects are forced in a painful manner upon the attention of those who are required to execute the laws. Our present statutes with respect to licenses have not been strictly enforced in our large commercial towns and cities. It is difficult to say if this is owing to the defects and insufficiency of the system, or to the nature of the subject. Various statutes have at different times been passed in this State to limit and regulate the sale of intoxicating liquors; but heretofore the restraints of education, morality and religion, and the efforts of philanthropic individuals and associations, have been more effective than legislative enactments to check intemperance. Its evils have been aggravated by the practice which has greatly increased within a few years, of using deleterious drugs in the manufacture of intoxicating liquors, which has been productive of most pernicious effects upon the mental and physical condition of those who use them. The whole subject will doubtless engage your attention. It is surrounded with difficulties and embarrassments, and unless the legislation in regard to it is judicious, it will increase the evils which it is so important to prevent. Any measures which you may adopt should be framed so as not to conflict with well settled principles of legislation, or with the rights of our citizens.[12]

I renew the recommendations contained in my last annual message in relation to the Code of Procedure.

Those who formed the National Constitution, felt that a consolidated government could not successfully legislate

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12 See message of March 31, 1854, for veto of "act for the suppression of intemperance."

for a great number of communities, living under varied conditions, occupying regions with different climates, soils and productions, and each requiring for itself a vast amount of local and peculiar legislation. It was the design therefore of the Convention which framed that instrument, to combine sovereign States in a manner which should present compact and united strength against foreign invasion, and to give them a position of dignity and influence in their transactions with other nations, without interfering, except in specified cases, with the powers of the State governments in respect to the general objects and most important purposes of legislation. So happily was our Constitution conceived, that the fears entertained at the period of its adoption, that it could not be maintained against conflicting local interests, have proved entirely groundless.

Although the number of States has increased from thirteen to thirty-one, and we have, in addition, vast territories, some of which are yet unorganized and unpeopled, there is no reason to apprehend, if the principles of our national Constitution are maintained in their strictness and purity, that the time will ever come when it will be overthrown, or cease to be desirable and advantageous.

From the period of the foundation of our government, conflicting views with respect to the powers which it can rightfully exercise, have divided our citizens into two great political parties, and most of the questions which have agitated the public mind have had their origin in differences of opinion with regard to the measures it can constitutionally adopt. Radical differences of construction have been manifested in discussions with respect to alien and sedition laws; protective tariffs; the establishment of banks; extravagant systems of internal improvement, and in agitations designed to induce Congress to interfere with the peculiar affairs of the people of the different States.

The powers and duties of our government will always be subjects of deep interest; and they will continue to ex-

cite discussions and to create party divisions and organizations. Heretofore the views of those who contend for a strict construction of the Constitution and a maintenance of the rights of the States, have usually prevailed. Under their policy our country has continued to increase in power, greatness, and prosperity. Its jurisdiction reaches from the Atlantic to the Pacific, and its territories have become equal in extent to the continent of Europe. While this policy has received the marked approbation of our people, those who concede their correctness do not always admit their application to particular measures. At different periods personal interests have induced many to sacrifice the restraints of a strict construction of the national compact. But the evils which have resulted from such deviations from constitutional principles, have soon demonstrated their pernicious tendency.

It is obvious that the agitation with respect to slavery in the States; the measures for advancing personal interests, under the cover of protective tariffs; for profuse expenditures for internal improvements; for the support by the public treasury of different schemes to promote private wealth and interest, have a common origin in mistaken views of constitutional law. These erroneous views are sometimes held by those apparently occupying antagonistic positions, yet, their projects being based upon similar constructions of the national compact, their respective supporters are ultimately led into harmonious action, however conflicting their purposes may at first appear. If the general government has the right to incorporate banks, or to carry on extensive systems of internal improvement, it will be difficult to resist the argument that it has a right to interfere with local interests in other respects.

It is of vital importance that clear and correct views of the Constitution and of the rights of the States, should exist in the minds of our people. It should be understood, that interference with the local affairs of the different

States, is not to be avoided from motives of expediency, but from the higher and stronger considerations of constitutional limitations, restrictions and obligations. The dignity and sovereignty of the several States will best be secured where their rights are clearly appreciated and fully recognized — where they rely upon the national compact, and not upon forbearance from improper assaults, nor upon the intrusive guardianship of those who have nothing to do with their local institutions. Their rights should be defended by the barriers of the Constitution, and not by the assumed protection of individuals who are engaged in the passing excitements or the speculative projects of the day.

All measures of government which are calculated to harmonize conflicting interests and calm excitements, should be firmly sustained, and our citizens should be invoked to cherish fraternal feelings among the people of the different States of the Union. But these considerations should not be substituted in the place of constitutional rights, or solely relied upon to the exclusion of the constitutional compact, to preserve and perpetuate our political institutions.

The chief magistrate of our Union* in his late message to Congress has avowed his approval of the distinctive doctrines which were entertained and expressed by Presidents Jefferson and Jackson in their communications to Congress. Whatever conflicts of opinion may have existed heretofore with respect to particular questions which have excited the public mind, and which may for a time have obscured in the apprehension of some, true views of our national compact, all who concur in the purpose of maintaining the provisions of that instrument and preserving the purity of our congressional legislation, will sustain and uphold the views which he has expressed and the policy which he has marked out. By doing so they will

* Franklin Pierce.

not only put an end to all sectional agitations under whatever pretext commenced or continued, but also to the practice becoming so common of resorting to the National capital with designs of perverting its legislation to purposes of pecuniary gain. It will then cease to be true that the humble claim for redress for conceded wrongs is often overlooked, while equivocal measures, making large drafts upon the revenues of the people, are sustained and carried through by the influence of the very funds which they draw from the public treasury.

At this time the people would approve of a law granting the public lands to actual settlers, necessary improvements can best be promoted in our new States by giving them a population which will cultivate their soil and increase their resources rather than by bestowing the national domain in large quantities upon a few individuals engaged in speculative schemes who will hold them from occupation until they can command the highest prices. A distribution of these lands to actual settlers will be a humane measure, affording homes to the destitute, employment to labor and creating wealth by increasing the productions of the soil. Improvements constructed by individual enterprise, and managed with economy and skill will follow upon the path of the hardy settler, while our government will be saved from the evils which threaten it from the corruption of legislation and from the exercise of unconstitutional powers.

New York has an historical interest in a faithful and rigid compliance with the restrictions of power contained in the Constitution of the United States and in its amendments.

There were those in the convention which formed that instrument, who wished to create a consolidated government and annihilate local legislatures, and others who sought to give a preponderating influence to the larger states, by inequalities of representation founded upon wealth and population. Although, at that day, its ample

territory, its fertile soil and its commanding position, gave assurance of future wealth, population and greatness, the delegates from New York strenuously opposed these schemes, and asserted the equality of the local governments and their rights of sovereignty. A majority of its delegates withdrew from the convention when the principles of equality were impaired. It adopted the Constitution reluctantly, because its language admitted of constructions dangerous to the rights of the states, and its assent was accompanied by a resolution "that the Constitution be ratified in full confidence that the amendments proposed by this convention will be adopted."

The amendments which this State was chiefly instrumental in procuring, secure the free exercise of religion, freedom of speech, and the right of the people to bear arms and to petition for redress of grievances. They shield the persons and property of our citizens against unreasonable searches and seizures by regulating criminal proceedings, and preserving the right of trial by jury. To prevent misconstruction and abuse of power, our State demanded the amendments which declare that "the enumeration of certain rights shall not be construed to deny or disparage others retained by the people," and that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively."[1] These articles constitute the great barriers against the encroachments of the general government and the principal defences to the rights and sovereignty of the States, and the liberties of our citizens. The great principles which New York asserted at the period of the adoption of the Constitution in behalf of the several States, and of the rights of the people, it will continue to maintain and defend.

The past history of our State and Nation admonish us that their prosperity and progress are best promoted by

[1] U. S. Const. amendments 1 to 10, inclusive.

rigid economy in the management of their affairs, and by strict compliance with the requirements of their respective constitutions.

I shall cordially co-operate with you in every measure calculated to advance the interests or welfare of the people of this State.

HORATIO SEYMOUR.

Albany, January 3, 1854.

SPECIAL MESSAGES.

January 9. To the Senate: Transmitting a memorial from the Merchants' Exchange in the city of New York, relative to encroachments upon the harbor of New York. See Senate Document, No. 8. [See note 8.]

January 11. To the Assembly: Transmitting the annual report of the Adjutant General.

February 17. To the Senate: Transmitting the bill described in the following senate resolution:

"Resolved, That his Excellency, the Governor, be requested to return to the Senate the bill entitled 'An act to change the name of the Fulton Insurance Company,' for the purpose of amending the same."

This resolution was adopted by the Senate on the 27th of January, but was not sent to the Assembly for its concurrence. This seems to have been the beginning of the practice of recalling bills from the Governor by resolution. Previous to this session the Governor frequently, and in a few instances at subsequent sessions, on his own motion, returned bills to the Legislature for amendment, and they were amended and passed again. Several instances of this method of procuring amendments have already been given, and others will be found in subsequent years. By the resolution above cited a new method of returning bills was initiated, and since that time the suggestion of the return of a bill has usually originated in the house in which the bill was introduced. Up to 1870 the recall resolution

was sometimes adopted by one house only, and sometimes a resolution was concurrent. In 1865, the court of appeals, in People v. Devlin, 33 N. Y. 269, held that a bill could not be recalled from the Governor by one house only. Notwithstanding this decision bills were afterwards recalled in a few instances by the resolution of one house, without concurrence by the other, but in modern practice recall resolutions are required to be concurrent. It often happens that a bill is returned for amendment at the Governor's suggestion, and sometimes to avoid a direct veto, where the Governor intimates his unwillingness to approve it.

Messages from the Governor simply transmitting bills for amendment in response to legislative resolutions, are not included in this work, unless a particular message contains a discussion of something in the bill, or should be noted for other reasons.

March 23. To the Assembly, transmitting documents received from the Department of State at Washington, and recommending that the Superintendent of Common Schools be authorized to carry out the suggestions contained therein, so far as the same may be practicable.

The legislative records do not contain these documents, but from a resolution offered in the Assembly, it seems that they were received by the State department from the British minister at Washington, and contained an invitation to co-operate in an educational exhibition to be held in London under the auspices of the Society of Arts, Manufactures and Commerce in June, 1854. The Legislature did not act on the matter at this session.

March 31. To the Senate:

Veto of a bill entitled "An act for the suppression of intemperance."

"As I do not approve of the bill, I return it to the Senate, in pursuance of the directions of the Constitution of this State, with my objections to its becoming a law.

I have given to the bill the respectful consideration due to the importance of the subject, and the deliberate action of the two branches of the Legislature.

I cannot sign the bill, for I believe its provisions are calculated to injure the cause of temperance, and impair the welfare of the State.

Anticipating action on the subject of this bill by the Legislature, I took occasion in my annual message to suggest that 'it was surrounded with difficulties and embarrassments, and unless legislation in regard to it was judicious, it would increase the evils it was important to prevent; that any measures adopted should be framed so as not to conflict with well settled principles of legislation, or with the rights of our citizens.' This bill is unconstitutional, is unjust and oppressive in its character, and subversive of well settled principles of legislation.

The people, irrespective of their different views of the use of intoxicating liquors, when advised of its provisions, will regard them with surprise and alarm.

The sale of strong or spirituous liquors or wines in quantities less than five gallons, is now prohibited, and offenders are liable to be fined or imprisoned.

To this general rule there are two exceptions. The supervisors and justices of the peace in each town, acting as commissioners of excise, are authorized to license persons of good moral character to keep taverns where intoxicating liquors can be sold, provided they have accommodations to entertain travelers, and a tavern is absolutely necessary at the place where the applicant proposes to keep the same. The commissioners are also authorized to grant licenses to grocers to sell strong and spirituous liquors, and wines, but not to be drank in their shops, houses, outhouses, yards or gardens.

The statute further imposes restraints upon the sale of intoxicating liquors by licensed tavern keepers or grocers, to apprentices or minors. Violations of the terms of these

licenses are punishable by fine or imprisonment. The evils which spring from the use of liquors in the shops and drinking houses, are mainly owing to the fact that the present laws are not enforced. In addition to this, the excise officers are elected by the people of their respective cities or towns, and the citizens of each locality can prevent the issuing of all licenses by electing those who are opposed to granting them.

The people of this State are divided in opinion with regard to the propriety of using intoxicating drinks. One portion desire the passage of a law which will prohibit their sale, while another, embracing those engaged in various pursuits and professions, regard their use as proper, although they deplore the evils of intemperance.

These differences of opinion have given rise to earnest discussions, and led to the formation of societies and associations to check intemperance, and to persuade all to abstain from the use of intoxicating liquors.

The bill which I now return proposes legislative interference. It is designed to compel abstinence by severe fines and penalties, and by directing seizure and destruction of liquors kept contrary to its provisions.

The ninth section of this act directs that 'Whenever complaint, on oath or affirmation, shall be made in writing to any magistrate, by any two or more credible persons, residents of the town or city where the complaint is made, that they have reason to believe, and do believe, that intoxicating liquors are kept and deposited, intended for sale by any person not authorized to sell the same in any place whatsoever within said city or town, or upon any water adjacent thereto, or within five hundred yards of the boundaries thereof, which complaint shall state the facts and the circumstances on which such belief is founded, it shall be the duty of such magistrate, if he be satisfied that there is probable cause for such belief, forthwith to issue a warrant commanding the officer to whom the same shall be

directed, with proper assistance, forthwith, diligently to search such place in the day time, and to seize all intoxicating liquors found therein, together with the vessels within which the same are contained, and to store the same in some safe and convenient place, to be disposed of as hereinafter provided. But no warrant shall be issued under this or the preceding section, to search any dwelling house in which, or in part of which a shop is not kept, except upon proof that intoxicating liquor has been sold therein by the occupant thereof, or with his consent, within one month before the time of making such complaint. Every warrant so issued, shall designate and describe the place to be searched.'

The eleventh section of the bill of rights, asserts 'that the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, ought not to be violated, and no warrant can issue but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized.' The same declaration is contained in the Constitution of the United States.[1]

This provision of the Constitution of the United States, and declaration in the bill of rights, were designed to prevent the issuing of 'general warrants.' They were suggested by the controversy in Great Britain, growing out of the resistance of the friends of civil and constitutional liberty, to the exercise of pretended prerogatives of the crown. This controversy called forth able expositions of the rights of citizens, and excited profound interest in Great Britain and its dependencies.

The principles advocated by those who were the bold and eloquent defenders of the colonists were impressed upon the minds of the men who formed our political institutions.

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[1] U. S. Const. 4th am.; N. Y. Rev. Stat. pt. 1, chap. 4, § 11.

The decision against 'general warrants,' by Lord Camden, whose memory will ever be held in reverence by the American people, for his defence of their rights, and for his great abilities as a judge and statesman, was received with the utmost enthusiasm by the friends of constitutional liberty. He declared 'that to enter a man's house under color of a general warrant in order to procure evidence, was worse than the Spanish Inquisition — a law under which no Englishman would wish to live an hour. It was a most daring attack upon the liberty of the subject.'

The warrant to be issued under the ninth section of this bill, is obnoxious to all the objections urged against 'general warrants,' and conflicts directly with the declaration in the bill of rights. It is not directed against any person, and therefore is a nameless warrant. It authorizes officers, in the absence of the owner of the premises or property to be seized, to search wherever malice or their suspicions may lead them; it does not describe the thing to be seized, by quantity, quality or marks. The complaint may only charge that certain described liquors are kept contrary to law, but the warrant must command the officer forthwith diligently to search the place designated, 'and to seize all the intoxicating liquors found therein.' The liquors may be entirely different in their character, and may be owned by a great number of persons under various circumstances. In case complaint was made because one cask of liquor in a warehouse, canal boat or other vessel, was, in the belief of the complainant, designed for sale by a person not authorized, the officer would be compelled to seize all other liquors it contained, although they should be the property of different owners, and there should be no pretext nor complaint that they were designed for sale. It is made the duty of the officer to seize them even if it be perfectly apparent to him that they are designed for shipment to another State, or foreign market, or are imported and remaining in the original packages.

Many of these objections apply with equal force to the eighth section of this act. It is no answer to these objections, to say that the articles cannot, in the nature of things, be more particularly described, or that artifice will be resorted to to conceal the real owner of the liquors, and their intended use. The inadequacy of all human laws to reach and punish offenders of every grade, can never be obviated, and furnishes no reason for overthrowing the great principles of justice or the safeguards of the Constitution. To resort to this, would be to create a far greater evil than that for which a remedy is sought.

New York was for some time unwilling to accede to the union of the States without amendments to the National Constitution, which, among other things, should shield the persons and property of our citizens against unreasonable searches and seizures. When it finally adopted that constitution, its assent was accompanied by a resolution, that it was in the full confidence that the proposed amendments would be engrafted upon it. This was done, and our State should be the last to violate principles adopted in accordance with its demands.

The directions of seizing intoxicating liquors, contained in the laws of Massachusetts, are similar to those of this bill, and in most instances the same terms are used. The distinguished chief justice of that State, in a recent and elaborate opinion, held such proceedings to be in violation of the bill of rights of Massachusetts, which contains declarations on the subject of searches similar to those of New York. It is true that the bill of rights of this State, has not the authority of the Constitution, but with the law-making power it is entitled to equal regard. It consists of declarations of great and universally conceded truths — political axioms, which constitutions and laws are designed to maintain and defend. This act is more open to the objections urged against 'general warrants' than the provisions decided in Massachusetts to be void. It is de-

clared in both acts ' that no warrant shall be issued under this or the preceding section to search any dwelling house, except upon proof that intoxicating liquor has been sold therein by the occupant, or by his consent, within one month before the time of making such complaint.'

The protection this clause apparently gives to the homes of our citizens, is practically destroyed by the following extraordinary rule of evidence laid down in the 32d section of this bill, and which is not contained in the law of Massachusetts.

' § 32. Upon the trial of any complaint or civil action, commenced under any provision of this act, proof of the sale of liquor shall be sufficient to sustain an averment of an unlawful sale. Whenever an unlawful sale is alleged, and a delivery proved, it shall not be necessary to prove a payment, but such delivery shall be sufficient evidence of sale.'

In other words, when an unlawful sale of liquor is alleged, it is sufficient to convict the accused of a misdemeanor, to subject him to a fine and imprisonment, and to a forfeiture of his property, merely to show a delivery of liquor, an act, legal, and under some circumstances, commendable.

Reversing every principle of evidence and justice, proof that a citizen has given and delivered to another any intoxicating liquors, although it may be for mechanical or medicinal purposes, by a monstrous legal inference, convicts him of a crime. Thus, without proof of guilt, he is condemned unless he can prove his innocence.

What security have our citizens against the invasion of their homes by officers who are directed, without regard to the presence or absence of their occupants, diligently to search their dwellings where the proof of an innocent act is sufficient to convict of an offence, and to place his home upon the level of the ship or warehouse. This act is highly penal, and the searches which it directs are designed

to seize property, and to procure evidence of a violation or intended violation of the law.

The domicil of the citizen has heretofore been considered so sacred, has been so fortified and defended by the principles of the common law, that it is familiarly spoken of as his castle. It cannot legally be searched, although the occupant is charged with murder or treason. Under the most tyrannical sovereigns of England this principle has been preserved by the courts. The only deviation is in cases of searches for stolen property, which are allowed upon the ground, that they are designed to restore it to its rightful owners. Even this exception has been regretted by eminent jurists, and its propriety doubted. What cannot legally be done to detect the darkest and most dangerous crimes, is directed by this bill, to procure evidence of guilt, and to forfeit property for acts which are now legal, and the criminality of which is adjourned over until the close of the present year.

The 13th, 14th and 17th sections of the bill, directing the forfeiture and destruction of the liquor, are unconstitutional. It is declared in section 6th, article 1st of the Constitution, that 'no person shall be deprived of life, liberty, or property, without due process of law.'

Section nine of the bill directs the officer, when a warrant is issued to search any place, 'to seize all intoxicating liquors found therein.' If complaint is made that a single cask in a vessel, or custom or warehouse, is unlawfully designed for sale, all other intoxicating liquors in such vessel, custom or warehouse, must be seized, although there is no complaint nor pretext that they are to be used for any unlawful purpose. These are usually stored in large quantities in our commercial towns. Any person placing a single cask of intoxicating liquor which is unlawfully owned, in a place where such articles are stored, subjects them all to seizure. This may be done by malicious persons with a view to cause their seizure, or to take advantage of this

unguarded law to get possession of property with fraudulent designs. After this sweeping seizure, if the owners are unknown or cannot be found, and their places of residence are not known to the officer, he is directed to deliver a notice to any person of mature age residing in the place where the seizure is made, or if none such can be found, by posting the notice upon the outside of the premises, and in two conspicuous places in the city or town.

Section thirteen directs that the liquors shall be stored for two weeks after service and posting notices, 'after which, upon due proof of such service and posting, such liquors shall be adjudged forfeited by the magistrate, unless they shall have been claimed.'

Section 17 of the bill directs that the magistrate, when the property is forfeited, shall issue a warrant commanding that the liquor so seized and forfeited, be destroyed.

The productions of the citizens of this and other States are sent from all parts of this great country to be stored in our commercial towns. The summary measures against intoxicating liquors authorized by this act, would open a door to gross frauds and malicious proceedings. Two weeks' notice by posting would be entirely insufficient to non-resident owners.

In the case of liquors seized because they are in the same vessel or warehouse with others, and forfeited and destroyed because the owners did not know of their seizure, it cannot be said that such owners have been deprived of their property 'by due process of law.' No complaint has ever been made with regard to it, nor is it within the contemplation of the complaint on which the warrant issues, and which 'sweeps it into the net of the law.' There may be no charge, pretext, or belief that it is designed for any unlawful object; no inquiry or investigation is to be made by any officer to ascertain the facts of the case. The property is seized, and because it is found on the same premises

with other liquors intended for unlawful sale, it is forfeited and destroyed for this imputed offence.

But if the owner fortunately receives notice, his constitutional rights are not protected. The supreme court of this State has decided that ' the terms due process of law, used in the Constitution, cannot mean less than a prosecution or suit, instituted and conducted according to the prescribed forms and solemnities for ascertaining guilt or determining the title to property. It will be seen that the same measure of protection against legislative encroachments, is extended to life, liberty and property, and if the latter can be taken without forensic trial and judgment, there is no security for the others.*

The rights of property cannot be destroyed by mere legislation.

Section 14 provides that any person may at any time before forfeiture, present a claim to the property seized, and the magistrate shall hold a court for the trial of such claim, and shall hear proofs and allegations offered in support of and against the same, and unless the claimant shall show by positive proof, to the satisfaction of the court or jury, that such liquor is of foreign production, and has been imported under the laws of the United States, and in accordance therewith, and is contained in the original packages in which the same was imported, and in quantities not less than the laws of the United States prescribe, and that the same was kept by him for lawful purposes, or that the same came lawfully into his possession, and was kept by him for lawful purposes, the same shall be adjudged forfeited, and judgment shall be rendered against the claimant for the costs; and in default of payment thereof, execution shall be issued therefor, against his property and person.

Although the seizure and forfeiture is highly penal in its character, and no charge is made that the property is ille-

* Taylor v. Porter (1843), 4 Hill, 140.

gally held, yet, against all principles of evidence, justice or propriety, it assumes that the law has been violated, that the owner is guilty, and his property liable to confiscation, unless he can show, by positive proof, that the same was kept for lawful purposes.

This makes it a question of intent of which it is impossible to give 'positive proof.' There is nothing in the act requiring the complainant to appear against the owner, so that he may be informed of the nature and cause of the accusation, in truth no complaint may have been made against him or his property. It is not required that he shall be confronted with the witnesses against him; his guilt is assumed. True, it is provided that the magistrate or jury shall hear the proof or allegations, offered in support of and against the claimant, and witnesses may be compelled to attend, but, until the claimant has first shown, by 'positive proof' his ownership of the property, its legality, and that he kept it for lawful purposes, the law requires no allegation and proofs against him; the case is made complete by the original *ex parte* oaths, upon which his property was seized by warrants. Reversing the order of every other known proceeding, he stands convicted, until his innocence is proved, upon charges made against other parties. This is not 'due process of law.' This point was recently decided in the supreme court of Massachusetts, where the same question was involved. The language of the bill of rights of that State, is not as decided against such forfeitures as the Constitution of New York.

The other objections I shall urge against this bill, apply to provisions which are not contained in the laws of Massachusetts, nor should they be found among the Statutes of any State. They are opposed to all well settled principles of common law, dangerous to the liberties of our citizens, and repugnant to the religious and moral sentiments of the community. Whatever differences of opinion there may be, with regard to laws, prohibiting the sale of intoxicating

liquors, there will be none with respect to some features of this bill.

Section 19 provided, that 'whenever complaint on oath or affirmation in writing, which complaint shall state the facts and circumstances upon which his belief is founded, shall be made before any magistrate by any person, that he has just cause to suspect, and does suspect and believe that any offence against any provision of this act has been committed, and that some other person or persons, named by him, has or have knowledge of the commission of such offence, such magistrate, if he thinks there be probable cause to believe that such person or persons has or have knowledge of the commission of such offence, shall forthwith issue a summons to the person or persons so named, commanding him or them to appear before him at a place and time not more than two days thereafter, to be designated in such summons, to testify in relation to such complaint.'

Section 21 directs, that 'whenever any person shall appear or be brought before any magistrate, as provided in the two preceding sections, it shall be the duty of such magistrate to administer to such person an oath or affirmation, and to examine him for the purpose of ascertaining, whether any offence has been committed against any provision of this act. If such person shall refuse to be sworn or affirmed, or to answer any question pertinent to such examination, he shall be committed to the common jail, there to remain until he shall consent to be sworn or affirmed, or to answer. If, upon such examination it shall appear that any such offence has been committed within the jurisdiction of such magistrate, it shall be his duty to issue a warrant for the arrest of the offender, and the search of his premises, as hereinbefore provided.'

In order to subject any citizen to this inquisitorial proceeding, it is only necessary that a complaint should be made, which need not state nor prove that an offence has

been committed, but only suspicions, and the facts upon which they are founded, to authorize the magistrate to bring before him by summons or attachment, the person suspected of having some knowledge of a suspected offence. This he may do, although no proceedings have been commenced against persons or property, no trial pending, no right to the services of counsel or open hearing secured. The person brought up for examination may be and is most likely to be the offender himself, yet the magistrate may put to him such questions as he may deem necessary in this search after an offence. If the party summoned refuse to reply to such questions, he is to be committed to jail, there to remain until he consents to answer.

Section sixth of the first article of the Constitution, declares that no person 'shall be compelled in any criminal case to be a witness against himself.'

By the proposed act, if the facts should be of a character to criminate the party under examination, he would still be compelled to answer or be imprisoned. If he answer untruly, it is made perjury by the act. If he admits that he has committed an offence, it is made the duty of the magistrate to arrest him and search his premises. If this bill should become a law, this unprecedented proceeding would be perverted to the worst purposes. It would be used to obtain testimony in civil and criminal suits, not growing out of this law, but arising out of the ordinary transactions of life. Proceedings so tyrannical and unusual would tend to strife, bitterness and resistance of the laws.

There are nearly four thousand local magistrates before whom these proceedings may be had. There are to be no limitations of their powers, they are not to be subject to the rules of evidence, nor restrained by the rights of witnesses; they may ask such questions as their discretion shall dictate, and compel answers by imprisonment; the character of the investigation and the imprisonment, are determined by the discretion of the justice.

The eloquent denunciations of a distinguished jurist apply with peculiar force to this proceeding. 'The discretion of a judge is the law of tyrants; it is always unknown; it is different in different men; it is casual, and depends upon constitution, temper and passion. In the best, it is oftentimes caprice; in the worst, it is every vice, folly and passion, to which human nature is liable.'

Section twenty-six of this bill provides that 'Any person may maintain an action to recover any money paid, or the value of any services, or labor rendered or done, or the value or possession of any property, assigned and conveyed, in payment for liquors sold contrary to the provisions of this act, by the husband, wife, parent, child, ward, apprentice or servant of the plaintiff, and in such action, the person by whom such money was paid, services or labor rendered or done, or property assigned or conveyed, if not a party to the action, or the husband or wife to the party, shall be a witness to any matter pertinent to such action. Any married woman may commence and maintain such action in her own name, with or without the consent of her husband.'

Under section twenty-nine, another action may be brought by the same parties 'against any other person who shall sell any liquor contrary to any provision of this act, to the husband, wife, parent, child, guardian, ward, apprentice or servant of the plaintiff, or who shall intoxicate or cause such person to be intoxicated, and it shall not be necessary in any such action to aver or prove any special damage, but the court or jury before which such action is tried, shall assess the damages of the plaintiff therein; but any special damage may be shown. Any married woman may maintain any such action in her own name, with or without the consent of her husband.'

These two sections create rights of action heretofore unknown. Under one, the persons designated can recover money they have never paid, and under the other, main-

tain an action for damages which they have never suffered. The sympathy which is naturally and justly extended to suffering wives and children, and the indignation excited by the belief that the seller of liquor has often turned a deaf ear to their entreaties, must not lead us to create evils on the other extreme, nor be blind to the unlimited effects of these sections. They do not make proper discriminations. They would permit the wife, parents, and each of the children of a temperate, intelligent and virtuous man, without regard to their number, age or condition, to recover money which never belonged to them, and which may have been paid to an unlicensed seller for liquor purchased for mechanical, medicinal, or even sacramental purposes. After the children, parents, or wife of the buyer have recovered the amount paid to the vendor, the latter may again be sued by each of the described persons, under the twenty-ninth section.

In this action it is not necessary to show any violation of law except by the intendments consequent upon proof of the delivery of intoxicating liquor. In the multiplied suits which may be brought under this section before a justice of the peace or other magistrate, it is not necessary to prove or aver any special damage, but upon mere proof of the delivery of intoxicating liquors, the jury are authorized to assess damages at their discretion. The defendant is liable to be deprived of his property by a prejudiced or excited jury, without having any of the usual protections which our laws afford to the most dangerous and hardened criminals. He is denied the benefit of the intendment that he is innocent until he is proved guilty. Under our laws, in certain cases juries are authorized to give vindictive damages where the violation of the law is shown by actual proof, and the character of the transaction is brought to their knowledge, the evidence given in such cases affords some guide to their judgment, and the unjust verdict may be corrected; but under this section they may have before

them only presumptions and intendments of guilt, and nothing to restrain their passions or prejudices. The section creates new rights of action, and abolishes salutary modes of proceeding and the best principles of evidence.

It is not the due process of law required by the Constitution of the State. The suits under this section, and all other suits, civil and criminal, authorized by this bill, to be tried subject to the provisions of the 32d section, are not trials in any sense in which that term is understood by our Constitution and laws.

There are other objections to the 26th and 29th sections. The domestic relations are deemed sacred, not only by the laws of the land, but by the religious and moral sentiments of our people. There are but few who, under the influence of novel ideas and theories, seek to impair these relations.

The public sentiment would approve of a law which should give a right of action to the wife and children of intemperate husbands and fathers, against those who should sell them intoxicating liquors, and which should subject the defendant to exemplary damages if found guilty, after a fair trial. But the lawful head of the family should not be deprived of the respect and authority due to his position, until he has forfeited them by his misconduct.

Suits brought under these sections, where the father is the buyer, and a temperate man, necessarily implies that he is the instigator of a dishonest prosecution on the part of his wife or children, or that he is to be made an object of contempt by them. It makes his home a scene of strife, or a place where fraud is plotted. In order to maintain suits, it is not necessary to show that the father is an intemperate man incapable of managing his affairs, or that the liquor was purchased for the purpose of drinking; he is not even guilty of an offence when he buys. It may be said the seller should not violate the law under any circumstances. But the worst of criminals must not be deprived of the protection of the principles of justice. This act

multiplies penalties, fines, forfeitures and actions against the alleged offender, and at the same time deprives him of his constitutional right of presumptive innocence.

The 33d section of the bill directs that 'no person or corporation shall knowingly carry or transport any liquor from place to place within this State, or from any place without this State, to any place within this State; and no person shall knowingly deliver any liquor to any other person, or to any corporation, for the purpose of being so carried or transported, unless the name and place of business, or residence of the person to whom the same is to be conveyed, together with the words 'intoxicating liquor,' are distinctly marked on the outside package in which the same is contained.'

This regulation cannot be of great importance in carrying out the objects of this law, but it would, in connection with the provisions for the seizure of liquors, inflict a severe blow upon the great carrying and commercial interests of the State of New York.

As there would always be a liability on the part of citizens of other states to overlook or neglect these police regulations, they would create constant embarrassments to our domestic commerce. The law recognizes the legality and propriety of manufacturing, transporting and using intoxicating liquors; but if it subjects them to penalties and forfeitures upon light proofs, or for imputed offences, which are proved by the mere fact that they are found in vessels or storehouses with liquors illegally held, it will divert from our canals, our railroads and our cities, not only this particular commerce, but all that is connected with it. The citizens of other States will not separate their diversified productions, when they send them to, or obtain them from the markets of the east. If we drive off a portion of their commerce, their convenience and interest will be promoted by withdrawing the whole and seeking other channels which are free from embarrassments.

The idea pervades the bill, that unusual, numerous, and severe penalties, will secure enforcement; but all experience shows that the undue severity of laws defeats their execution.

After the excitement which enacted them has passed away, no one feels disposed to enforce them, for no law can be sustained which goes beyond public feeling and sentiment.

I have omitted any notice of many defective provisions in the bill, as they might be corrected by future legislation. I have confined my objections to those which are radically wrong; which are inconsistent with the principles of justice, with the rights of persons and of property, and which so pervade the bill that they cannot be stricken out without destroying its entire fabric. The bill is wrong, because it directs unreasonable searches of the premises and dwellings of our citizens under circumstances calculated to provoke resistance; it deprives persons of their property in a manner prohibited by the Constitution, it subjects them, on mere suspicion of knowledge of a suspected crime, to an inquisitorial examination.

For one act of alleged violation of law, a citizen may be proceeded against as a criminal — be fined or imprisoned, and his property seized or forfeited; he may be proceeded against in civil suits by various parties with whom he has had no dealings, and subjected to the payment of damages where none have been averred or proved. To all these prosecutions he may be subjected without the benefit of trial, in the usual and judicial meaning of that term.

The Constitution makes it my duty to point out the objectionable features of this bill,[k] but I owe it to the subject, and to the friends of the measure, to add the expression of my belief that intemperance cannot be extirpated by prohibitory laws; they are not consistent with sound prin-

[k] Const. 1846, art. 4, § 9.

ciples of legislation. Like decrees to regulate religious creeds or forms of worship, they provoke resistance where they are designed to enforce obedience.

The effort to suppress intemperance by unusual and arbitrary measures, proves that the Legislature is attempting to do that which is not within its province to enact or its power to enforce. This is the error which lies at the foundation of this bill — which distorts its details, and makes it a cause of angry controversy.

Should it become a law, it would render its advocates odious as the supporters of unjust and arbitrary enactments. Its evils would only cease upon its repeal, or when it became a dead letter upon the statute book. Judicious legislation may correct abuses in the manufacture, sale or use of intoxicating liquors; it can do no more.

All experience shows that temperance, like other virtues, is not produced by law-makers, but by the influence of education, morality and religion.

While a conscientious discharge of duty, and a belief that explicit language is due to the friends of this bill, require me to state my objections to the measure in decided terms, it must not be understood that I am indifferent to the evils of intemperance, or wanting in respect and sympathy for those who are engaged in their suppression. I regard intemperance as a fruitful source of degradation and misery. I look with no favor upon the habits of practices which have produced the crime and suffering which are constantly forced upon my attention in the painful discharge of official duties. After long and earnest reflection, I am satisfied reliance cannot be placed upon prohibitory laws to eradicate these evils. Men may be persuaded — they cannot be compelled to adopt habits of temperance.

I concur with many of the earnest and devoted friends of temperance in the opinion that it will hereafter be a cause for regret, if the interest which is now excited in the public mind upon that subject, should be diverted from its proper

channels and exhausted in attempts to procure legislation which must be fruitless."

The bill was not passed over the veto. A prohibitory law, chapter 231, was passed in 1855; it was declared unconstitutional in Wynehamer v. People (1856), 13 N. Y. 378. For Governor Clark's discussion of the subject, see *post,* pp. 799, 858.

April 3. To the Senate:

Veto of a bill entitled "An act to authorize the laying out, opening and working of a public highway in the village of Canandaigua, Ontario County, and raising money to defray the expense of working said highway."

"The following are my objections to the bill:

It appears from documents, duly authenticated, laid before me, that in May last, an application to the commissioners of highways was duly made in the manner prescribed by law, for the laying out of the street or road described in the bill; that the commissioners decided to lay out the same; that an appeal by parties interested was thereupon duly made to the county judge, who appointed three referees residing in other towns, to hear and determine the said appeal according to law; and that the referees upon a hearing of all the parties, unanimously reversed the order and determination of the commissioners. This decision is by law, made conclusive. (Section 8, chapter 455, of the Laws of 1847.)

Upon comparing the bill with the above proceedings, I find that the proposed street or road described in it, is identical with that described in those proceedings.

The bill then presents the distinct question whether the Legislature can or should interfere in, and by law reverse a judicial determination in a private controversy between citizens.

There is no feature of our Constitution more marked

and decided than the separation of the legislative and judicial functions. To each is allotted its appropriate duties, and neither can encroach upon the province of the other, without jeopardizing the rights of all. I cannot perceive any distinction in principle between the adjudications of the lowest and the highest court in the State; and if the judgment of the tribunal legally created for that purpose may be reversed or annulled by a legislative act, I am unable to see why a judgment of the court of appeals may not share the same fate. Our constitutions never contemplated the exercise of judicial powers by the Legislature, either originally or by way of review, of the decisions of the judicial tribunals. All the usages, customs and practice of the State, since the foundation of the government, are hostile to such acts. Conceiving the bill to be an open and direct violation of a great fundamental principle, which, if tolerated, would lead to the most enormous abuses, I must withhold my signature from it. A bill involving a similar principle, was returned without his signature, a few years since, by Governor Fish, and his objections were sustained by the Legislature.[13] I know of no other instance where even the attempt has been made, prior to the present bill, to overrule or interfere with a judicial determination of the Legislature."

The bill was not passed over the veto.

April 12. To the Senate:

Veto of a bill entitled "An act to amend section forty-two, title six, chapter five, part first of the Revised Statutes."

"The bill makes no actual change in the forty-second section, as it has been judicially determined in this State,

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[13] See special message of April 10, 1850, for a veto by Governor Fish of a bill in relation to the court of appeals and for the relief of certain suitors, *ante*, p. 532.

that the Governor does not now possess the power of filling any office because the term has expired for which the incumbent was appointed. By the laws of this State, all officers appointed by the Governor, or the Governor and Senate, hold their places until their successors are appointed. Although their commissions may expire during the recess of the Senate, this does not create the vacancy contemplated by the Statute. The amendment proposed by the bill by inserting the word 'actual' before the word 'vacancy,' in the forty-second section, adds nothing to the force of the present law. The change in the phraseology of the section, is useless and nugatory. (See 9th Paige's Reports 509.*)

The second section of the bill is wrong. It takes from the Governor of this State, a power which he ought to have, that of removing certain officers if they are guilty of misconduct or neglect of duty. This section secures to a few officials, the enjoyment of their places, although their neglect of duty may expose the public interests to disastrous consequences. The power to remove incompetent or unfaithful public officers in certain cases, has been vested in the Governor of this State for many years, and the public interests demand that the laws should not be changed in this respect."

The bill was not passed over the veto.

April 13. To the Senate:

Veto of a bill entitled "An act to amend an act entitled 'An act to simplify the manner of collecting arrears of taxes, assessments and regular rents of croton water in the city and county of New York,' passed July 20, 1853."

"Section 16, of the 3d article of the Constitution of this State, directs that 'no private or local bill which may be

*Tappan v. Gray (1842).

passed by the Legislature, shall embrace more than one subject, and that shall be expressed in the title.' The bill which I return, is a local act. The first section provides, that 'the president of the croton aqueduct board shall, annually, on the last day of April, cause to be prepared and transmitted to the clerk of arrears, a separate account for each ward, for all lots on which the said regular rents for that water year may remain unpaid, with the amount due on each lot; and shall include in such account which he shall first rended after the passage of this act, whatever regular rents may remain unpaid, of previous years; and shall at the time notify the Comptroller of the aggregate amount of the regular rents so returned, and shall thereafter receive no payments on account of the same, but may, nevertheless, certify to the clerk of arrears, any overcharges which shall upon such certificate be remitted by the clerk of arrears at any time before settlement.'

The second section is as follows:

'§ 2. The owner of any real estate which may hereafter be sold for taxes or assessments, or for water rents in the city of New York, or his legal representative, shall have the right to redeem the same from the purchaser or his heirs, administrators, or assigns, at any time within twenty years from the day of sale, after one year's notice in writing, of his intention so to do, by paying the amount for which the property was sold, and ten per cent interest thereon, from the day of sale until the time of redemption, and also for the improvements made thereon at their fair valuation; the value of such improvements to be determined if not agreed upon, between the parties, by three persons to be appointed by the superior court of said city.'

It will be seen that the second section makes great and radical changes in the law respecting the redemption of property which may hereafter be sold in the city of New York, not only for water rents, but for taxes or assessments for all other purposes. It is apparent this is the

most important feature of the bill; but it is in no respect expressed in its title, as required by the Constitution. It also violates that instrument by introducing into this bill 'more than one subject' of legislation.

The provision of the Constitution which I have quoted, was designed not only to prevent improper combinations in the Legislature among the friends of different objects, but to secure to the public at large, some notice of the scope and character of proposed measures, by requiring that they shall be expressed in the titles of all private and local bills.

Aside from constitutional objections, I am unwilling to approve and sign any bills which violate salutary principles, by combining in the same acts subjects which have no necessary connection with each other, under a title which is calculated to mislead the public, and to keep it in ignorance of the effect of proposed measures. It is the policy of our Constitution, and should be the object of the Legislature so to conduct the passage of laws, that the public may be advised of their effects and consequences, and allowed an opportunity to express their objections to them."

The bill was not passed over the veto.

April 13. To the Senate:

Veto of a bill entitled "An act to amend an act entitled 'An act to amend the fourth title of the thirteenth chapter of the first part of the Revised Statutes, entitled "regulations concerning the assessment of taxes on incorporated companies and the commutation or collection thereof,' passed July 21, 1853."

"The first and only section of this bill, is as follows:

'1. There shall be added to the tenth section of the act mentioned in this title, as follows, viz: And in all cases of banking corporations, when the amount of loans and discounts are limited by law, such corporations shall be al-

lowed to increase their loans and discounts to an amount equal to the amount of surplus profits on hand.'

It will be seen that there is no connection whatever between the subject of this bill and the object indicated by its title. It substantially allows all banking corporations for the purpose of making loans and discounts, to increase their capital to an amount equal to their surplus profits, under color of amending the laws concerning the assessment of taxes on incorporated companies. I am not prepared to say that this great change in our banking system is or is not desirable; but I cannot consent to sign a bill the objects of which are not in some degree expressed in its title. The Legislature should give full and fair notice of the subject of its legislation. No practices should be allowed which are calculated to mislead or blind the public as to the effects of proposed laws. It is apparent that the references of this bill, either upon the journals of the Senate, or in the columns of the daily press, would in no degree lead any one to suspect its nature. The publication of the proceedings of the two branches of the Legislature, are designed to give to the people of this State, an opportunity to express their objections to all measures which they may deem hurtful to the general interests, or destructive of private rights. I cannot approve any bill, the title of which is calculated to mislead the public as to its true character and purpose. I therefore return the bill to the Senate, where it originated, without my signature or approval."

The bill was not passed over the veto.

April 14. To the Senate:

Veto of a bill entitled "An act to authorize the election of a local officer to discharge the duties of county judge and surrogate in the county of Washington."

"The bill is unconstitutional. The third section provides that 'such local officer shall be, and he hereby is allowed to receive for his own use and benefit, the same

fees and perquisites as are now allowed by law to the county judge and surrogate, for like services done by them or either of them; but shall not receive any compensation from the county, &c.

Section 20, of the 6th article of the constitution, provides that 'no judicial officer (except justices of the peace), shall receive to his own use, any fees or perquisites of office.'"

The bill was not passed over the veto.

April 14. To the Assembly:

Veto of a bill entitled "An act to appoint commissioners to investigate and examine into the pecuniary affairs and condition of the several state prisons, and to report thereon, and also such laws as they may deem proper for the better regulation and discipline of said prisons, to the Legislature of this State." [14]

"The bill provides that it shall be the duty of the Comptroller to appoint three Commissioners to make the proposed examinations, and he is also required to appoint a Clerk and Sergeant-at-Arms. The Treasurer of the State is directed to pay, from time to time upon the warrant of the Comptroller to each of the said Commissioners, the Clerk and the Sergeant-at-Arms respectively, such sum or sums as the Comptroller shall certify to be a reasonable compensation for their services under this act.

By the Constitution of this State, three Inspectors of State Prisons are elected by the People, and are paid from the public treasury for performing the duties which this bill confers upon the commissioners to be appointed by this Comptroller.[1] The powers of the Inspectors are clearly defined by our laws, and they embrace every object contemplated by this bill. The information which it is proposed to get by this expensive commission can be obtained from public officers who are liable to be impeached if they are guilty of any neglect of duty. The practice of ap-

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[14] The prison bill was passed over the veto and became a law, chapter 223, on the 14th of April, 1854.

[1] Const. 1846, art. 5, § 4.

pointing legislative or other commissions to be paid for the performance of duties which belong to public officers has been attended with great expense and no practical benefits. They are frequently got up for the purpose of giving employment or bestowing patronage at the expense of the State.

A committee was appointed in 1851 to examine the condition of our prisons, and their able and elaborate report made in 1851 has never been acted upon nor referred by the Legislature. These commissioners are governed by no rules nor fixed objects of enquiry. They usually become mere partizan inquisitions, and their reports are regarded with but little respect by the public, while their assumptions of powers, which belong to public officers, release the latter from their appropriate responsibilities. Sound policy requires that public officers should be held to a strict performance of their duties. If the State Prison Inspectors have neglected theirs they should be impeached. Our laws provide, if they are guilty of misconduct or malversation in office, that the Executive shall remove them.

The Constitution directs that the Governor shall 'take care that the laws are fully executed.'[m] I shall observe this direction, not only with respect to the State Prison Inspectors, but in regard to all other officers, so far as my authority extends. Complaints are made that the Prisons of the State are not properly managed with regard to their finances and in other respects. In addition to the examination made by the legislative committee in 1851, my predecessor, in 1852, directed an investigation into the affairs of the Prison at Auburn. I shall examine into the complaints which are made at this time, and shall take care that the officers of the Prisons perform their duties, and give to the Legislature and the public full and explicit information respecting the condition and management of the institutions under their charge.

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[m] Const. 1846, art. 4, § 4.

The salutary bill which recently passed, established a sound financial system for our Prisons, will put an end to the creation of any more debts, and will enable the officers to manage them hereafter with more economy, as they will be able to pay promptly for every article they may buy for the State.

The bill which I return is also objectionable because it conflicts with the distribution of powers and duties of the several branches of the State government, made by the Constitution. The different departments derive their clearly defined powers from a common source, and they should be kept within their respective and proper limits. For this reason I have not responded to legislative resolutions of inquiry, which have been addressed to me, respecting the performance of the duties conferred upon the Governor of this State by the Constitution. For the same reason I object to this bill. In order to animate all branches of the State government with a sense of their appropriate duties, it is important that the rights of each should be understood by themselves and the public.

The constitutional distribution of power among the Legislative, Judicial and Executive departments should be observed and respected. It enables the people of the State to attach the proper responsibilities to the different public officers. It is essential to wise and intelligent legislation, to the faithful performance of duty, and the protection of private rights and public interests. All the objects of the bill are amply provided for by constitutional directions and statutory enactments. The bill will cause useless expense, and is not consistent with sound policy. I do not doubt that the State Prison Inspectors will perform their duties. If they do not, I shall 'take care that the laws are faithfully executed.'"

April 15. To the Assembly: Transmitting a statement and report of executive pardons, commutations and respites for the year 1853.

April 17. The Legislature adjourned without day.

MYRON H. CLARK, Governor.

ANNUAL MESSAGE.

To the Senate and Assembly:

Fellow Citizens.—In obedience to the requirements of the Constitution, I hereby submit for your consideration an account of the financial condition of the State, its various institutions and interests, together with such remarks as they suggest, and as seem to me appropriate.

The receipts on account of the General Fund during the last fiscal year, were $1,955,527.42; and the payments during the same period were $1,817,850.98. At the close of the fiscal year ending Sept. 30, 1853, there was a deficiency in the revenue of this fund $419,212.96; this has been reduced during the past year $140,158.58, and the deficiency on the 30th of September, 1854, was $279,054.38. This reduction has been effected by the increase in the State tax, which was raised from one-quarter of a mill to one mill on the dollar by the Legislature of 1853; over half the amount thus raised, however, $657,145.86, was paid in accordance with the requirements of the law, to the Auditor of the Canal Department, for the payment of debts due to contractors, for damages, &c. During the next fiscal year the State tax will be only three-quarters of a mill on the dollar; and according to the estimates of the Comptroller, the income of the General Fund will not be sufficient to meet the ordinary expenses of the government, including the indebtedness of the State prisons—so that the deficiency now existing will be still further increased.

Myron H. Clark

The receipts of the General Fund during the past year include the sum of $200,000, out of surplus revenues of the canals, after meeting previous demands upon them, made by the Constitution, to the amount of $1,650,000.[a] By the amendment of the Constitution adopted in 1853,* authorizing loans for the completion of the enlargement of the State canals, there is set apart out of these revenues such additional sum as shall be sufficient to pay the interest as it falls due, and extinguish the principal in eighteen years, of any loans that may be made for the purpose specified.[b] This provision will increase the sum payable out of the surplus revenues of the canals, before the General Fund can receive any benefit from them, to $1,940,820, during the coming, and to a still larger amount during each succeeding year. Under these circumstances there is some reason to apprehend, that the large contribution, hitherto made to the General Fund from the canal revenues, must be suspended, and that the deficiency in that fund must be correspondingly increased. The Legislature will, therefore, perceive the necessity of more than ordinary economy in the appropriations they may make for any of the various objects, that will solicit their attention.

These deficiencies in the General Fund have hitherto been paid out of moneys in the treasury, belonging to the several funds, held by the State in trust,—the amount due those funds on the 30th of September, 1854, and constituting a debt against the State, was $108,770.77, above the available means in the treasury. The condition of the General Fund as well as the custom that has become uniform, of appropriating the capital of trust funds, held by the

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[a] Const. 1846, art. 7, §§ 1, 2, 3.

[b] Const. 1846, art. 7, § 3, am. 1854.

* Approved by the people in 1854.

State and declared by the Constitution to be inviolable, to meet its deficiencies, demand the attention of the Legislature.[c]

The debt of the General Fund on the 30th of September last was $6,355,654.37. In the Sinking Fund provided by the Constitution for the extinguishment of this debt, there is a deficiency for the past fiscal year of $11,568.68, which is likely to be still further increased.[1]

The capital of the School Fund at the close of the fiscal year was $2,425,211.97; which is an increase of $41,954.74 during the year. The receipts on account of the revenue of this fund were $144,116.97. The capital of the literature fund is $268,620.12, and the revenue received from it during the year was $16,332.14. The capital of the United States Deposit Fund is $4,014,520.71, and the receipts on account of its revenue were $257,699.08.

The receipts of the State canals from tolls, rent of surplus waters and interest on current canal revenues, during the past year, amounted to $2,988,665.21 — and the aggregate expenditures for repairs, superintendence, &c., were $1,237,865.20. The surplus revenue was thus only $1,750,-799.01. In accordance with the requirements of the Constitution, the sum of $1,944,861.72 has been set apart for the various purposes specified in that instrument, includ-

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[c] Const. 1846, art. 9, § 1.

[1] By chapter 335, passed April 12, the general tax rate was fixed at a mill and a quarter. The act appropriated $320,000 to the canal fund to meet existing deficiencies and provide for the payment of interest. The same act amended the sinking fund law of 1848, chapter 216, and authorized the commissioners of the canal fund to borrow on eighteen year loans money to meet the deficiencies in any of the sinking funds provided for in article seven of the Constitution. The act also repealed, with some exceptions, the tax law of 1842. Chapter 335 of 1855, was sustained in People ex rel. Burrows v. Orange County (1858), 17 N. Y. 235.

ing $200,000, towards the expenses of the State government.[d] There is a deficiency, therefore, in the revenues of the canals, of $194,062.71. This result is due to a variety of causes, some of which, it may reasonably be hoped, will not again occur, while others may be remedied by judicious legislation. The commercial embarrassments of the country, a severe and unusual drought followed by short crops, navigation often impeded by want of water and difficult from the incompleteness of its channels, and the active rivalry of competing modes of transportation, have combined to diminish the business and the revenues of these great State works; while a large increase in the expenditures for repairs, partly due, without doubt, to inconsiderate and mischievous legislation, and other causes, has increased the expenses far beyond a proper limit. It is hoped that these causes of embarrassment and of loss to the canals may be removed; but without a much larger increase in the revenues than can reasonably be expected, there will not only be no surplus to be appropriated to the work of enlargement, but the usual contribution to the General Fund, must be withheld. There is no good reason to apprehend any inability to make all the payments to the Sinking Funds required by the Constitution so that the credit of the State will not be in the least degree impaired.

The loan of $2,250,000 made for the purposes of the enlargement realized a premium of $342,952.77. The total amount of contracts entered into for work on the enlargement of the several canals, is $4,538,741.84, at prices averaging over 21 per cent. less than the estimates of the engineers. The report of the Auditor of the Canal Department contains much information and many suggestions on the general subject well worthy of your attention.[2]

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[d] Const. 1846, art. 7, §§ 1, 2, 3, am. 1854.

[2] Chapter 23, passed February 19, authorized the commissioners of the canal fund to borrow $2,250,000 to pay expenses for canal enlargement under

From the records of the Banking Department it appears that fifteen banking associations have been organized, and eight individual bankers have deposited securities and received circulating notes, during the last fiscal year. The total amount of circulating notes issued to banking associations and individual bankers, and outstanding on the 30th September, 1854, was $24,661,572, for the redemption of which there was held in trust by the Superintendent securities amounting to $25,962,160, of which $6,718,248.11 was in bonds and mortgages. The whole number of banks, banking associations and individual bankers in the State was 334; the amount of circulation was $43,962,535; and the whole amount of banking capital was $83,773,288; being an increase of $7,081,213 over the previous year. Notwithstanding the extraordinary financial embarrassments of the year, the banks of the State, with but few exceptions, have promptly met their liabilities to the bill holders and the public. The cases in which failures have occurred, afford renewed evidence of the comparative insecurity of allowing bonds and mortgages to be received at their par value, as a basis for banking. During the past year there has been an increase in this class of securities of $940,670.72, much of which has replaced State stocks that have been withdrawn. Inasmuch as the new issues of State stock authorized by the recent amendment of the Constitution,* will furnish all the securities required for legitimate and healthy banking purposes, the attention of the Legislature may very properly be directed to the propriety of modifying the existing law in this respect. Abuses that have occurred in the appropriation by banks of discount of funds deposited in savings banks with which they

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the act of 1854, chapter 330, and chapter 528, passed April 14, 1855, authorized a loan of a like amount to continue the enlargement. The latter act also made appropriations for the purposes specified in article 7 of the Constitution, and for maintenance, ordinary repairs, and administration.

* Const. 1846, art. 7, § 3, am. 1854.

are connected, suggest the necessity of some additional legislation for the more perfect security of that very large class of our people for whose benefit banks for savings are established by law. The details of the condition of the banking interests of the State will of course be set forth in the report of the Superintendent of the Banking Department.

The increasing importance of our penal institutions, not only entitles them to your continued watchful supervision, but demands a closer scrutiny of the system upon which they are conducted, with a view to such amendments as may be necessary to obviate its existing evils, and secure, through it, the highest good attainable. Such a classification of offences and of criminals, as should prevent the association of the young, unschooled in crime, and suffering, perhaps, for their first deviation from the path of rectitude, with hardened offenders who glory in their guilt, would conduce much to the reformation of the former, or at least prevent our prisons from being what they now too often are, schools of depravity. Under the existing organization of our prisons, this much-needed discrimination cannot be exercised, and thus the reformatory influence which, under a better system, they might exert, is lost to the community; and they are made, in some sort, the instruments for perpetuating the vices which they are designed to restrain. How far, if at all, this evil can be obviated by further legislation, is worthy of your enquiry; and will receive, I doubt not, that measure of consideration which its importance demands.

The financial condition of our prisons will be presented to you by the Comptroller, and the inspectors of State Prisons. The frequent applications made to the Legislature for appropriations to discharge the pecuniary liabilities of these institutions, led to the adoption of a resolution, on the part of the Senate, last year, calling upon the several inspectors to report the whole indebtedness of

the prisons of the State. This was done; and it was found that their aggregate liabilities amounted, at the lowest estimate, to $214,715.38. When it is remembered that but a few years since, the prisons were a source of revenue to the State, this vast indebtedness compels the conviction that those charged with their management were incompetent to the performance of their duties, or utterly unworthy the trust which had been confided to them.

The enormous discrepancy between the reports of the Inspectors and the annual exhibits of the respective agents, attracted the attention of the Legislature, which, at its last session, passed a bill directing the Comptroller to appoint three commissioners, who should be charged with the duty of investigating the affairs of the prisons, and report thereon. The commissioners appointed under that act have not yet completed their labors, but will do so in time to make their report at an early period of the session.[3] The evidence which they can present will enable you to judge what evils have existed, and what further measures, if any, are needed to prevent their recurrence. Under the law as amended by the last Legislature, the duties of agent were more minutely defined, and greater restrictions and safeguards thrown around them. These, under the administration of proper officers, may be sufficient to guard against the repetition of gross abuses. Should additional legislation be needed, however, any law that promises to secure more accuracy in the transaction of the business, and demands more rigid accountability from the officers of our penal institutions, will meet with my cordial approval.[4]

The Auburn prison, under the operation of the amended law, has been enabled to more than meet its expenses during the past six months; and the accounts of the agent ex-

[3] The prison commission appointed in 1854 presented its report to the Assembly on the 31st of January, 1855.

[4] Chapter 552, passed April 19, contained numerous provisions relative to prison administration.

hibit a large balance to his credit on the books of the Comptroller, notwithstanding the low rates at which contracts have been let, and the pressure to which all industrial enterprises have been subjected.

There is a great wrong involved in the operation of our existing law for the detention of witnesses. Under its provisions, the person who has been so unfortunate as to witness the perpetration of a murder, and who is unable to give bonds to testify to the facts in the case, is subject to the same confinement, the same diet, and the same associations, as he who is charged with the commission of the crime. Surely the ends of public justice cannot demand so gross an invasion of individual right. That a usage so unjust should have obtained, and continued until now, a foul blot upon our criminal code, reflects little credit upon our progressive civilization, and furnishes but indifferent demonstration of the maxim: "Law is the perfection of human reason." I trust that to direct your attention to this injustice, will be sufficient to secure its removal, by such modifications in the law referred to as will reconcile the rights of the individual with the interests of the public.

My immediate predecessor, in his last annual message, recommended that a portion of the earnings of prisoners, during the period of their incarceration, be reserved for their own use, in the following terms: "I suggest the propriety of allowing to convicts, as a reward for industry and good conduct, some portion of their earnings, for the benefit of themselves or their families. This would be calculated to animate them with hope, to create habits of foresight and prudence, and, by enabling them to assist their families, would cultivate the better instincts of their nature. It would also give them, at the expiration of their terms of imprisonment, some means of support until they could overcome the difficulties of obtaining employment. In numerous instances discharged convicts are led to the commission of crime by the poverty and want consequent

upon the prejudices which exist against them. Humanity and policy alike dictate that every encouragement should be afforded to these unfortunate persons to retrieve their past errors." This recommendation impresses me as both politic and right, and therefore worthy of your consideration.[5]

The onerous, and still increasing burden thrown upon the Executive by the numerous petitions for pardon brought before him, demands the adoption of some measure by the Legislature that shall diminish the number of these applications, which, during the past year, amounted to no less than 1,200 cases, many of which required laborious and protracted investigation. The evil might, perhaps, be remedied in part by giving greater discretionary power to judges, in the graduation of penalties according to the different degrees of turpitude that mark the crime; so that they will not be compelled to sentence the offender five or ten years, because the law arbitrarily fixes both the minimum and the maximum of the term, when one, two, or three, would be more proportioned to the offence, and equally beneficial. Such a modification of the statute, rendering it more accordant with equity, would also tend to the prevention of crime, by increasing the chances of its adequate punishment; for all experience has demonstrated that it is the certainty of the penalty, rather than its amount, that deters men from the violation of law.

The subject, I am aware, is one of much delicacy, and will demand the exercise of a sound discretion; but I cannot doubt that the united wisdom of the Legislature will be able to devise a measure so much needed to check a growing evil, to equalize the allotments of justice, and to relieve the Executive of the State from a responsibility whose burdens are greatly disproportioned to the benefits that can accrue to the Commonwealth from its exercise.

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[5] See 1854, note 4, for suggestions and plans relative to commutations for good behavior, *ante*, p. 723.

The House of Refuge in New York has been, during the past year, conducted with its usual efficiency and success. Some two months since, the Institution was removed to the new building recently erected on Randall's Island, which will give it more ample accommodations than it has hitherto enjoyed, and thus enable it to extend its operations and increase its usefulness. The managers design, as soon as they are enabled to do so, to erect an additional building for the female department. Until this is done, the contemplated system of classification and separation cannot be carried out. It is intended that the new building shall be of sufficient capacity to accommodate two hundred and fifty inmates; and the importance of its early construction will be evident, from the fact that this is the only reform school in the State for girls, receiving them from all the counties. It receives boys from only half the State.

Four hundred and thirteen children of both sexes have been admitted during the year; three hundred and eighty-three have been indentured; there now remain in the institution, 343 boys and 75 girls—total 418. The whole number admitted since its establishment, is 6,361.

The kindred institution at Rochester seems, also, in a prosperous condition. Its present number of inmates is 262; its sanitary state is satisfactory; there is a general compliance with its discipline on the part of the boys; and the moral results justify the most sanguine hopes of its friends. The appropriation made last year for the erection of an additional wing, and for the furnishing of the same, has been about half expended. The new wing has been erected and enclosed, and will be ready for occupancy by the first of July. Some additional aid may be required from the State to furnish it, and also for the erection of gas works, for lighting the entire building. The report of the managers detailing more fully the condition of the institution, will be laid before you at an early day.

The State lunatic asylum at Utica, is nobly fulfilling the

purpose of its establishment, and justifying the confidence of the public in its official management. The whole number of patients treated during the past year, is 836; of these, 446 were in the institution at the beginning of the year, and 390 have been subsequently admitted. The house, it is estimated, can accommodate 440; the average number resident during the year has been 444; while 108 applications for admission have been refused, for want of room, and 51 unfavorable cases removed, to make room for more recent ones; showing a total of 159 to whom the benefits of the Institution could not be extended. Of these 836 cases treated during the year, 164 have been discharged as recovered; 42 as improved, and 116 unimproved; total, discharged, 386; remaining at the end of the year, 450. From the opening of the asylum in 1843, to the present date, 4,313 patients have been admitted to its benefits; of whom 1,789 have been discharged as recovered.

While the benevolent design of this Institution is conceded by all, I deem it but simple justice to remark that its excellent management is evidenced by its general results, which must commend themselves to the favorable judgment of all. Since its establishment, each succeeding year has demonstrated its increasing usefulness, and given it a stronger hold upon the public regard. Through its instrumentality, nearly two thousand of our fellow beings, deprived of the inestimable gift of reason, without which all blessings lose their value, have been restored to soundness of mind, the delights of social intercourse, and to their several spheres of usefulness in society. In numerous other cases, where full restoration was clearly beyond the province of human skill, the sufferings of the unfortunate patient have been greatly mitigated, and the anguish and anxiety of their friends materially relieved. Thus, through its whole existence, has the institution been a dispenser of blessings, great beyond the power of estimation. Its results have not only justified the Christian philanthropy

that suggested, and the beneficent provision which carried into practical operation so noble a charity, but have also conferred honor upon our Commonwealth, far greater than could have been won through the extension of her commerce, the increase of her wealth, or the reduction to her purposes of the material forces of nature.

But, while any of our unfortunate insane remain unprovided for, it is obvious that the State has not performed her whole duty towards her suffering children. If, during the past year, the Asylum at Utica has been compelled, for want of room, to reject 159 applicants for its benefits, we must expect, with an increase of our population, a corresponding increase of cases for which no provision is made; and a wise forethought will suggest that prompt measures be taken to remedy so serious a deficiency in our means of accommodating all whose misfortunes give them a claim upon our sympathy and help. I do therefore respectfully recommend that the requisite steps be taken by the Legislature, for the early enlargement of the Asylum at Utica, or the establishment of a similar institution in some other portion of the State. Both projects may be desirable; one or the other seems indispensable.

I would commend to your attention the report of the trustees of the Idiot asylum, which, since the adjournment of the Legislature, has been located at Syracuse. The new building designed for the accommodation of this important charity, is already enclosed, and rapidly approaching its completion; but the appropriation of the State ($10,000) is expended, the pay of the contractors largely in arrears, and numerous applications for the admission of pupils pressing upon the trustees. Under these circumstances, it is important that the means for the completion of the building, and for extending its benefits to all of that unfortunate class who may apply for them, be furnished without any unnecessary delay. I therefore recommend such appropriation for these purposes as may be requisite to

secure the earliest practical results contemplated by the State in the establishment of this institution.[6]

Application will be made to the Legislature for further aid to the Institution for the Blind, which now feels the pressure consequent upon the general paralysis of business. Its manufacturing department is designed to furnish employment not only for the pupils but also for the adult blind unconnected with the institution; but, from the cause already alluded to, there is little or no sale for its manufactures, and great pecuniary embarrassment is the necessary result. The usefulness of this department of the institution would undoubtedly be extended by such judicious aid as should place it beyond the fluctuations of business.

The present number of pupils in the institution is 141; 116 of whom are supported by the State, a few by the State of New Jersey, and the remainder by friends and relatives. In addition to these, 69 graduates, or persons who have lost their sight in mature life, are furnished with work from the manufactory at prices regulated with a view to their support; making a total of 210 who receive education or the means of subsistence through the institution. The number of pupils supported by the State is limited by law to 128. This restriction should be removed or many of the unfortunate class for whom the institution is provided must be deprived of its benefits.

From the Institution for the Instruction of the Deaf and Dumb, the reports received are of a satisfactory character, both in reference to its facilities for attaining the purpose designed, and the zeal and assiduity of the teachers in the discharge of their delicate and important duties.

The number of pupils now under instruction is 280. Two-thirds of these are beneficiaries of the State; the most

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[6] Chapter 163, passed April 5, 1855, appropriated $40,000 for the completion of the new buildings for the Idiot Asylum. See 1851, note 6, for a historical sketch of the asylum.

of the remainder are supported by their friends, the State of New Jersey, and the corporation of New York; a few from the income of a small fund derived from legacies and subscriptions, and set apart exclusively for this purpose.

Various industrial occupations are provided for the pupils, in the intervals of recreation and study, among which are cabinet making, shoe making, tailoring, bookbinding, gardening, wood engraving, drawing, &c.—thus not only furnishing to them a subject of present interest, but preparing them for future usefulness and the means of independent support. The experiment attempted two years since to introduce the higher branches of study into the institution has been attended with success, as will be evidenced by the documents which, in due time, will be submitted to you. These will also embrace accounts of receipts and expenditures, the sanitary condition of the pupils, and other matters pertaining to the condition of the establishment.[7]

From a statement of the Commissioners of Emigration, it appears that the arrival of alien emigrants in our ports, for the year ending December 27, 1854, was 313,747. For the year ending December 27, 1853, 283,332, showing an excess of the year just closed over the preceding, of 30,415. The present number of inmates in Ward's Island Hospital, 1,423; in the refuge department, 1,832, total, 3,255. The aggregate receipts for the year, were $672,192.56; disbursements, $607,076.62; balance in bank, $65,115.94.[8]

The State Library has, during the last year, received numerous and valuable donations from foreign governments and various institutions in Europe. Through the

[7] The appropriation act, chapter 539, passed April 14, appropriated $26,750 to be used towards the completion of buildings at Fanwood for the New York Institution for the Deaf and Dumb.

[8] Chapter 474, passed April 13, was intended to provide protection for immigrants, second class, steerage and deck passengers transported from New York, Albany, Troy, and Buffalo and Suspension Bridge.

presentation of our laws, the legislative documents, and the reports of our higher courts, it interchanges with every State and Territory in the Union; while the donations of citizens from various portions of our own country, have been frequent and liberal. Last year, the usual date of appropriations for the purchase of books, and for binding those received, was changed from the first of January to the first of October, the commencement of our fiscal year. No provision was made for the interim, and this has proved a source of difficulty in relation to existing contracts and purchases. I am assured that the supply of this deficiency (for nine months, according to the usual annual appropriation,) will be sufficient to meet every demand; I, therefore, recommend a grant for the same.[9]

Among the subjects which will require your attention there is none of more importance than the system of public education of the State. The magnitude of this interest has always been felt and appreciated by the people, and the State has shown from the earliest period of its existence, an earnest desire to provide the means for the adequate instruction of all the children within its limits. For a long time the system pursued was based on the assumption that education was mainly a matter of personal interest, and that the duty of providing it devolved exclusively upon parents; the instruction of the children of those whose poverty would not permit them to incur the expense of it themselves being made to depend upon the public charity. The inefficiency of this policy, its failure to accomplish the object aimed at, and especially its direct tendency to create distinctions hostile to the spirit and character of our institutions, led to its abandonment; and, a system, based upon the principle that the State is even more deeply and permanently interested in the education of its children than their parents, and that the expense of providing it

[9] The state library deficiency was supplied by chapter 28, passed February 24.

should be borne by the aggregate of the property within its limits, was adopted in its stead. Under the existing law, therefore, the State assumes the charge of public education,—committing its direction to local officers and paying the cost of it out of its own treasury. The system is comparatively new, and some practical defects are as yet exhibited in its workings; but they are such as spring chiefly from the failure to give full and complete development to its fundamental principles, and may easily be remedied by judicious legislation. The system itself is believed to be thoroughly rooted in the confidence and favor of the people.

The whole amount of money apportioned by the Superintendent of Public Instruction is $1,055,000, of which $800,000 was raised by a general tax, and $255,000 from the income of the Common School and U. S. Deposit Funds. The whole amount expended for public schools is $2,666,-609.36, of which $1,929,884.49 was applied to the payment of teachers, and $47,657.06 for the district libraries. The whole number of district schools reported for the year is 11,798; and the whole number of children in the State of the age required to draw public money 1,186,709. There have been 877,201 in attendance upon the district schools; in academies under the supervision of the Regents of the University, 37,406; 34,279 in unincorporated private schools, and 4,568 in colored schools. The average number of months during which the schools have been kept in the several districts is eight. The number of volumes in the district libraries is 1,571,270.

These results exhibit a gratifying increase in the number attending the district schools over the previous year. But it will still be seen that of the whole number of children of suitable age in the State there are 309,508, or nearly one-fourth of the whole number, who do not attend the district schools, and 233,255, or about twenty per cent, of the whole number, who do not attend any school. In view of the

provision which has been made for the express purpose of securing the education of all, this proportion is much too large; and indicates some defect in the system pursued, because it does not completely attain the object at which it aims. That it does not, may be partly due to the mode of distributing the public funds. By the existing law, two-thirds of the public funds are distributed among the various districts of the State, in proportion to the whole number of children of a specified age within their limits, whether they attend the schools or not. If the apportionment of the public money were made to depend upon the number attending school and upon the regularity of their attendance, it would become the interest of the citizens generally to promote the regular attendance of all the children within their limits. An amendment of the law which should give it this direction would, I believe, tend to secure, more fully, the desired result. The law is defective, also, in that it fails to carry out fully and completely the principle on which it is based. Education in the district schools is not yet entirely free. If the cost of the schools in any district exceeds the amount of money received from the State, the deficiency is made up by a rate bill, assessed upon those who send their children to school; and those who are unable to pay this assessment are relieved at the public expense, and thus become the recipients of public charity. The worst element of the old system is thus preserved, and the fundamental principle of the new law fails of its application in its most essential point. Education is still regarded as a matter of charity and not of right; and so long as this continues to be the case, in any degree or to any extent, it will detract from the full measure of usefulness which the system is designed to secure. This evil in the system can be remedied, only by making the schools entirely free.

The attention of the Legislature should also be directed to measures for improving the character of the schools,

for increasing their efficiency, and for elevating and extending the instruction which they impart. In a State where every citizen should take an active interest in the administration of public affairs, and may be called upon to perform the highest duties of public life, it is important that popular education be carried to the highest point which the means of the State will allow. It has been objected to the system of free schools, that people do not prize that which costs them nothing, and that relieving individuals from the expense of educating their children will diminish their interest in the subject and lead them to relax the vigilance which is essential to the highest excellence in the public schools. There is undoubtedly some force in the suggestion, though experience shows that it is much less than is sometimes supposed. But whether it be more or less, it is entitled to consideration, and provision should be made for obviating the objection in any system of education which the State may adopt. An obvious mode of doing this is by means of an active and intelligent supervision, by which the schools shall be regularly visited and their discipline examined by competent officers selected for that purpose. Various attempts have been made to supply this, but none of them have hitherto proved entirely successful. The agency provided by the present law is that of town superintendents; but it is found more expensive, and less efficient than is desirable, and gives rise to local dissensions, injurious to the successful working of the general system. Similar objections led to the abandonment of the system of county superintendents, a few years since. Unless the principle of visitation can be more effectually reconciled with public sentiment and made more economical and effective than it has been hitherto, the end which it is designed to secure must be sought by other means.[10]

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[10] The office of town superintendent of common schools was abolished in 1856, chapter 179.

The connection of our common schools with the higher institutions of learning, with academies and colleges, making them all, in fact, parts of one great system, could not fail to contribute essentially to their elevation, and bring the means of a thorough and complete education within the reach of all. In the city of New York, where the free school system of the State has been, perhaps, more completely developed than in any other section, the benefits of substantially such a union are very conspicuous. A free academy has been added to the system, in which a large and competent corps of professors and tutors has been provided, a plan of study extending over five years and embracing all the branches of study pursued in the best colleges of the country has been adopted, scientific apparatus, libraries, and all the aids requisite for study have been furnished, and the general discipline and course of instruction have been made in all respects of the highest and most efficient character. Pupils who shall have attended any of the district schools for eighteen months, maintained throughout a good standing and character, and passed a satisfactory examination in certain specified studies, are admitted to the academy and entitled to the full enjoyment of its advantages, free of all expense. The academy has been in operation only three or four years, and the average number of its students is over four hundred. The attendance shows that its benefits are fully appreciated. But besides the thorough and most useful instruction conferred upon so large a number of the children and youth of the community, its most marked advantages are seen in the influence which it exerts upon the common schools, stimulating their teachers, trustees, inspectors and pupils alike to a generous rivalry, increasing their vigilance and their industry, and rendering them zealous and emulous in sending the best pupils to the academy, whose facilities for education are the prize for which all may alike contend. While I am aware that large

cities afford facilities for such a system, which cannot be fully enjoyed in the rural districts, I think that something may be done throughout the State in this direction. A voluntary beginning, indeed, has already been made in some sections, by the establishment of union schools; and their success shows that the system is not wholly impracticable. I think that the time has come when higher purposes and broader views may be entertained in regard to our system of State education; and that our academies may be brought into a more direct and immediate connection with the general plan, and thrown more widely and more freely open to the advantages they are intended to confer. The character of their instruction should be elevated, and its range extended; and they should be more completely furnished with apparatus and the means of imparting knowledge in those sciences which are of the most service in practical life. By making free admission to the thorough and complete education they would then afford, the reward of excellence in our district schools, a stimulus would be furnished which could not fail to be felt beneficially upon their discipline and character. It would be highly desirable to bring the colleges of the State into harmonious connection with such a plan, so that they might become more directly recognized as members of our general system of State education and as essential to its completeness and perfection.

The subject of the revision of our excise laws will demand, and I doubt not will receive your serious attention. To the practical operation of these laws, either through their inherent viciousness, or in consequence of their lax administration, is attributed no small proportion of the drunkenness which afflicts our land. Something of this is undoubtedly attributable to the nonenforcement of our laws, such as they are; but I will not withhold my conviction that the laws themselves are radically defective, and however faithfully administered, must be held justly re-

sponsible for the evils which they foster, and in many instances create.

If the consequences of intemperance were confined to its immediate victims, though even then the State would have an interest at stake, there might, perhaps, be less occasion for legislative action. But such is not the fact. Every interest of society which it is the province of government to protect, is immediately or remotely involved in these consequences.

Intemperance deprives the State of the productive energy of thousands of her citizens, and so far diminishes its wealth, impedes its enterprise, and militates against the common good. It is a fruitful source of the pauperism which imposes heavy burdens upon industry and capital; and its intimate relation to crime, and consequently to the burdens which crime imposes upon us, is too obvious to escape your observation. If the purely moral aspects which it presents shall be deemed as not entering within the scope of your duties, its relation to taxation, and its producing causes is clearly within the province of legislation, and demands a degree of attention corresponding to the great issues which that relation involves.

The right to legislate in reference to the traffic in intoxicating liquors will not be denied. Our present excise system is the fruit of such legislation. It has, in the process of time, undergone many modifications, but its restrictive element, throughout all these changes, has been retained, in subservience to the original purpose of the system, viz: the prohibition of the traffic so far as the public good may demand and the constitutional limitations of the law-making power will permit. All restrictive legislation contains the germ of prohibition, is, in fact, prohibition partially applied; so that what is termed prohibitory legislation, in regard to the liquor traffic, is only the extension of a principle endorsed as sound by successive Legislatures, and its impartial application to all. The object

proposed by the founders of our State, when they incorporated the license system into its legislation, has not yet been attained; neither has the constitutional power of the Legislature in reference to it yet been exhausted. With the utmost desire to reach right conclusions in relation to this matter, and to guard against the assumption of powers not conferred by our fundamental law, I have found myself unable to come to any other result than this, that the legislative prohibition of the traffic in intoxicating drinks is not only demanded as a measure of protection to the health, the property, and the lives of our fellow-citizens, but that it is also distinctly indicated by the nature and purpose of civil government, and clearly within the limits of its constitutional powers. These opinions, diffidently entertained at first, have been wrought into convictions by a careful study of the limitations and duties of the law-making power, by judicial decisions, nearly or remotely affecting the principle involved, which have been had in the several States that prohibit the traffic in question, and by the *dicta* of the Supreme Court of the United States, which cover the whole ground in controversy, and leave little room for either cavil or doubt.

That the good results hoped for from the legislation recommended, are legitimate to it, several of the New England States, especially Maine and Connecticut, furnish the most gratifying evidence. The steady diminution of crime and pauperism in the States referred to, with a consequent and corresponding reduction of taxation; and the new impulse given to almost all industrial pursuits by the transformation of those who were once a burden upon the State, into producers of wealth, constitute an argument in favor of the policy advocated, which, while it carries conviction to the statesman, will be no less appreciated by the multitude, unskilled though they may be in casuistry, but also undebased by appetite and unperverted by interest. If anything is to be learned from the example of other

States, or to be deduced from our own increased experience, it should be made available to our use; and our legislation, upon all subjects, should keep pace with our advancing intelligence, always expressing the highest truth we have received, and reaching forward to the greatest good attainable.

I know of no subject that is likely to elicit your attention, that involves graver and more momentous interests, than the one thus presented for your consideration. That it is hedged about by difficulties, which demand the exercise of great prudence, and that it may not always be easy to reconcile conflicting interests with a nice adjustment of the scales of justice, I am not disposed to deny. But, guided by the purpose for which government was ordained, and keeping steadily in view the well-being of society, which always rests on a moral basis, these difficulties will disappear or be overcome; and you will be able, I trust, so to perfect the details of a bill as, on the one hand, to secure the suppression of a demoralizing traffic, and, on the other, to protect personal rights and give no just cause of complaint to those whose interests may be affected by the prohibitory legislation which the higher interests of community demand.[11]

It is already intimated, that the efforts heretofore made to modify our usury laws, will be renewed with the present Legislature. The idea of free trade in money, pervades the commercial community. Money, it is urged, relieved from the restraints of usury laws, would become plentiful and cheap. It is worthy of remark, however, that the argument

[11] A prohibitory law, chapter 231, was passed April 9, 1855. This act was held unconstitutional by the Court of Appeals in Wynehamer v. People (1856), 13 N. Y. 378; *contra*, People v. Quant (1855), 12 How. Pr. 83.

The revision of the excise laws suggested by the Governor was effected by chapter 628 of the laws of 1857. This law continued in force with some modifications until 1892, when it was repealed by the general excise law, chapter 401, enacted that year. See 1857, note, 3, *post*, Vol. 5, p. 20.

proceeds, generally, from the lender rather than the borrower of money. And does not this argument prove either too little or too much? If money is to be made free, should there not be equal freedom on the part of those who exchange their labor, and the products of labor for money? If an arbitrary value is given, by law, to coin and bank paper, why not also fix, by law, the standard value for labor, so that capital and labor may exist upon an equality? If you invest money, by legislation, with a power which, unrestricted, enables capital to oppress labor, do you not, while enfranchising capital, enslave labor? If, then, money is to be relieved from legislative restraint, should it not also be divested of the power conferred by legislation? While our laws stamp extrinsic values upon coin, may not laws, with equal justice and propriety, declare what rate of interest may be demanded and received for its use? And while legislation permits associations and individuals to circulate their paper promises to pay, as money, is it not clearly a duty to limit the rate of usance upon loans? Before declaring gold and silver, and their paper representatives, free, it would, in my judgment, be incumbent upon government, to assimilate money to the products of labor, by depriving gold, silver and bank notes of their artificial value. Then, and then only, may money be safely left, like the products of labor, to be regulated by the laws of trade.

The experience of older countries and older nations, where capital is more abundant, and seeks investment at moderate rates of usance, is referred to for evidence that free trade in money is beneficial to the community. This argument may become applicable to our condition when capital bears the same relation to enterprise and industry in this country that it does in Europe. But while the laboring and producing classes predominate so largely, it becomes us, instead of relaxing usury laws, to provide for their more rigid execution. Indeed, the most valid objection to these laws is found in their lax administration.

While respected by law-abiding citizens, and by cautious and timid usurers, they are disregarded by those who either hope to evade them, or who rely upon the honor or necessity of borrowers. A law either more or less stringent, against usury, if its enforcement could be ensured, would be productive of salutary effects.

The argument relied upon by the advocates of repeal is, that it will make money cheaper. But wherever this experiment has been tried in our country, the opposite effect has been produced. Even in our commercial metropolis, where are found those who are most strenuous on this subject, that description of paper supposed to be exempted from the taint of usury, can be negotiated only at rates of interest varying from twelve to twenty-four per cent per annum. Borrowing at this onerous rate, leads to almost certain ruin. It may be answered that only in times of pressure are the rates of interest so high. But what, if the power to regulate the whole question resides with capitalists, is to bring down the rates? What is to make money more plentiful and cheap when those who possess it have the power to keep it scarce and dear? There is a given amount of capital among us, seeking investment. If our laws rigidly prohibited the taking of more than the legal rate of interest, that capital would be available for all legitimate business purposes. If loans are made reluctantly at legal rates, it is because usurious ones may be obtained, through the violation or evasion of the laws.

The Legislature of 1850, in accordance with a then prevalent sentiment, awakened by the avoidance of a large debt by an incorporated bank, under the plea of usury, passed a law restraining incorporations from pleading usury. This, in my opinion, was a change in the wrong direction. Evils have resulted from that change which are now seriously embarrassing the whole business community. Stimulating at once enterprise and cupidity, that enactment has prompted improvements far too formidable for our means.

Impatient for railroads, our citizens, mistaking confidence for capital, have involved themselves and the country in a fearful aggregate of indebtedness. In their zeal to hasten the construction of railroads, time, circumstances, cost, and even their value when completed, have often been disregarded. The question in too many instances seems to have been, not whether the roads were needed, or would pay when constructed, but whether bonds could be negotiated, at no matter what rate of discount. This policy has thrown millions of depreciated railroad securities upon the market, at home and abroad, and now the reaction leaves us with thousands of miles of unfinished roads, and a stringent money pressure, operating injuriously upon all the business interests of the State. The expediency, therefore, of repealing the law which restrains corporations from pleading usury, is respectfully suggested.

The policy of constructing railroads by mixing credit with capital, though to a degree useful and safe, has grown into an abuse. Mortgage bonds, when protected by a solid stock basis, may be properly resorted to for the completion of legitimate enterprises. But when, as in too many instances, companies issue bonds greatly exceeding the amount of capital paid in, the consequences cannot fail to prove injurious. The Legislature will, doubtless, impose such restrictions, in this respect, as experience suggests and the general welfare demands.[12]

Connected with our railway system is another feature of great, but delicate interest. In their laudable desire to avail themselves of the advantages of such improvements, cities, villages and towns have loaned their credit to rail-

[12] Chapter 526, passed April 14, 1855, established a board of railroad commissioners, and prescribed their powers and duties. The board was to be composed of the State engineer and surveyor, one person to be selected on behalf of the stock and bondholders of all railroad corporations, and one other person to be appointed by the Governor and Senate. The act was repealed in 1857.

road companies. This is a power which should be sparingly granted by the Legislature, and cautiously exercised by the people. Though in some instances safe, yet, as a general rule, it is better to leave these projects to the enterprise and responsibility of individuals. The experience of the State, in this respect, is not at all calculated to commend the policy.[13]

The board of brokers in the city of New York, though self-constituted, and practically a close corporation, has grown to be a power in the State exerting a potent influence over all its monetary affairs, and seriously affecting the pecuniary interests of the people of our own and of other States. The standard of value for public securities, whether National, State, municipal or corporative, is fixed by that board. That there should be an ascertained, reliable market value for such securities, is readily admitted; and brokers, in this, as in other countries, are the recognized agents for their sale.

But the *bona fide* transfer of stocks has ceased to be the only, or even the most considerable item of the business of brokers. Time sales of securities constitute by far the largest element in the daily operations of the board. Many of the stocks and bonds quoted daily, though intrinsically worthless, derive and maintain a factitious value, until by the adroitness and collusion of parties interested, the purpose of their creation are answered, and then, like their equally worthless predecessors, disappear, to give place to other schemes as dishonest in inception and as fraudulent in design. The services of brokers are frequently required, and from some of their number readily obtained, to depreciate the value of undoubted securities, or to advance the price of bubble shares.

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[13] This form of municipal aid to private enterprise was prohibited by a constitutional amendment, article 8, section 11, recommended by the Commission of 1872 and approved by the people in 1874. See also Const. 1894, art. 8, § 10.

These evils, however, would be comparatively limited in extent and less alarming in tendency, but for that feature in the operations of the board to which I have alluded. Its practice of time sales of securities — a practice which now prevails to an alarming extent — fosters and stimulates a widespread spirit of gambling. This spirit pervades all classes. It is rife in our cities, and is abroad throughout the country. As in the case of lotteries, before their suppression,[f] the temptation which promises large and easy gains, not only excites the hopes of the sanguine, but too frequently overcomes the caution of the prudent. Disastrous failures in legitimate business are often traceable to wild and reckless time operations in stocks. And most of the frauds and defalcations which impair the credit of monied institutions, and destroy confidence in the integrity of individuals, owe their origin to the same pernicious cause.

It is not alleged nor supposed that the board of brokers, as such, is composed of men of exceptionable character. On the contrary, it is the high personal respectability, and the influential position of the members of the board, that has so long secured toleration and impunity for transactions so vicious in principle and so destructive in practice.

In view, therefore, of an abuse of such magnitude, and of consequences so injurious, I deem it my duty to submit to the Legislature the propriety of passing a law so far reforming and restraining the traffic in public securities as to divest it of this pernicious feature. It is not sufficient that these transactions are, by our present laws, illegal. The evil can only be eradicated by providing adequate penalties. An association whose official influence is greater even than that of the government; that has the power to appreciate this, and depress that, class of securities, and to which so large a body of our citizens pay tribute, should

[f] Const. 1821, art. 7, § 11; 1846, art. 1, § 10.

be required so to conduct its operations as neither to retard the general welfare, nor relax the public morals.

There is reason to apprehend, unless some further and more efficient safeguards are thrown around the elective franchise, especially in our cities, that the ballot boxes will cease to reflect the popular will. Each succeeding election discloses renewed cause of alarm in combinations to defraud the people, and too frequently, as is feared, with the knowledge and co-operation of those whose official duty it is to preserve the integrity of the ballot box. Such apprehensions are frequently expressed by those who insist that an investigation would furnish painful confirmation of the truth of all they fear. Heretofore the principal abuse of the elective franchise grew out of illegal voting. But it is alleged and believed that a great abuse exists now. That abuse has become so formidable, and is practiced so boldly, that a result in many of the election districts of the city of New York is supposed to depend less upon the sentiments and intentions of the electors, than upon the corrupt action of their inspectors. Frauds of this nature strike at the foundation of our free institutions. A representative government cannot endure, even if it were worth preserving, when the integrity of the ballot box comes to be habitually violated. I cannot doubt, therefore, that a subject of such vital importance will be regarded as worthy of your serious consideration.[14]

A controversy is pending in our courts of law between this State and the State of Virginia, which, from the importance of the principles involved and the extent to which

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[14] By chapter 513, passed April 14, 1855, eight ballot boxes were required to be used in the city of New York, each to be marked according to the class of ballots to be deposited therein. The act also prescribed the form of ballots and regulated the method of canvassing election returns in all parts of the State, prescribing particularly the order in which the boxes should be opened. See special message of April 13, for a veto of a bill to prevent illegal voting in the city of New York.

its decision will affect the right of this State to regulate its own domestic affairs, requires your attention. The facts out of which it arose, are these:—In the month of November, 1852, one Jonathan Lemmon, a citizen of Virginia, brought into the city of New York, eight persons whom, by the laws of Virginia, he had held as slaves, and with whom, as he alleged, he was on his way to Texas. They were brought, on a writ of *habeas corpus,* before one of the justices of the Supreme Court, who decided, that by virtue of the laws of New York, they were entitled to their freedom. They were accordingly discharged, and immediately removed to Canada, thus placing themselves beyond the jurisdiction of both our State and our federal laws. The sum of $5,000 was raised by voluntary contribution among the citizens of New York, to indemnify Mr. Lemmon for his loss. So far as individual interests were involved, although an appeal from the judge's decision had been taken on behalf of the claimant, the case would have been terminated by these proceedings. But the Governor of Virginia, in a special communication, dated December 17, 1852, called the attention of the Legislature of that State to this decision, which he characterized as "contrary to the spirit of all law, as opposed to the established principles which regulate intercourse with foreign nations, and at war with the relations which should subsist between the sister States of this Union, as well as at war with the spirit if not the letter of the constitution itself." The Governor further recommended that provision should be made by the State, for the efficient prosecution of the appeal which had been taken, and for "such other judicial proceedings as might be found necessary and proper for a satisfactory adjustment of the important question involved in this case." In accordance with this recommendation, the Legislature of Virginia subsequently directed the Attorney General of that State to prosecute the appeal, with such other counsel as the Executive might think proper to associate

with him. That appeal has not yet been heard, but will probably be argued at the next general term of our Supreme Court.

The language of the law of this State,—which declares that "no person held as a slave shall be imported, introduced or brought into this State on any pretence whatever," and that "every such person shall be free," is so explicit as to obviate all doubt in regard to its meaning. Its operation can be resisted, therefore, only upon the ground that it is contrary to the Constitution of the United States, or to the law of international comity. The law of nations would undoubtedly permit the citizens or subjects of one country to pass through another country with their property,—but only with property recognized as such by the same law. Slaves are property only by virtue of local law:—where that ceases to have jurisdiction, they cease to be property, and cannot be recognized or treated as such. If the decision of this question rested, therefore, upon the principles of international law, which is the only rule of international comity, I see nothing hostile to those principles in the law of this State, which applies to this case.

But the several States of this Union do not hold to each other the relation of independent powers. The law which regulates their intercourse and controls their conduct towards each other, is the Federal Constitution. By the provisions of that instrument, every State is left entirely free to make such laws in reference to its local institutions as it may see fit. To this there is but one exception. It declares that "no person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor."[s] Every State is thus prohibited from making any law or regulation by which fugitives from service, which is due under the laws of the

[s] U. S. Const., art. 4, § 2, clause 3.

State from which they may escape, shall be discharged from that service. The State of New York has always respected this prohibition, as well as the right of Virginia and of every other State to legalize and regulate Slavery within their own jurisdiction. But she claims equal sovereignty over her own domestic institutions, and the same right of declaring upon what conditions slavery may be allowed, or whether it shall be allowed at all, within her limits. If this right be denied her, she will be deprived of the most essential attribute of sovereignty — that of deciding upon the civil condition and securing the personal rights of those who may be brought under the protection of her laws.

It seems to me highly important that a question which involves, to so great an extent, the dignity and the rights of this State, should not be decided without a full and careful examination. At present no provision exists for defending the law of this State against the State of Virginia, either in our own courts or in the Federal courts to which the case will undoubtedly be carried if a decision against the law should not otherwise be obtained. I recommend, therefore, the adoption of a resolution directing the Attorney General, together with such counsel as may be associated with him, to defend the rights and the interests of this State in the appeal that has been taken.[15]

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[15] The Legislature complied with the Governor's suggestion, by adopting a resolution that "Ogden Hoffman, the present attorney general, be and hereby is authorized and directed, together with such counsel as the Governor may deem proper to associate with him, to defend the interests of this State, involved in an appeal brought on or prosecuted by direction of the Legislature of Virginia, from a decision by one of the justices of the Supreme Court of this State, in the Lemmon slave case."

The Lemmon case finally reached the court of appeals (Lemmon v. People (1860), 20 N. Y. 562), which decided that the slaves who had been brought into this State from Virginia in the manner described in the Governor's message, thereupon became free. The Court say that "Every sovereign state has a right to determine by its laws, the condition of all persons who

Having thus briefly brought to your notice those domestic interests which will demand your attention, it only remains for me to speak of our relations to the Federal Union, of which the State of New York, by its population and its wealth, constitutes an important part. The powers and duties of the general government are defined and limited by the Constitution, and relate to those objects only in which all the members of the Confederacy have a common interest. But its action not unfrequently affects our domestic prosperity, as well as our political rights, and may, therefore, very properly be made the subject of your review.

It is to be regretted that the Executive veto should have been again interposed to prevent the necessary improvement of the great channels of internal commerce; for not only would their unimpeded navigation constitute a source of material wealth, but would also give strength and durability to the bonds of our National Union. The States, by relinquishing the power of levying taxes upon commerce, have divested themselves of the ability to do this work; the duty of its performance, therefore, by the general government, seems obvious and imperative.[16]

Many branches of domestic industry are languishing for lack of that protection which proper tariff regulations would afford, and which, had they been seasonably adopted,

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may at any time be within its jurisdiction; to exclude therefrom those whose introduction would contravene its policy, or to declare the conditions upon which they may be received, and what subordination or restraint may lawfully be allowed by one class or description of persons over another. Each State has, moreover, the right to enact such rules as it may see fit respecting the title to property, and to declare what subjects shall, within the State, possess the attributes of property, and what shall be incapable of a proprietary right."

[16] The Legislature adopted a concurrent resolution recommending congressional legislation providing for removing obstructions in that part of the St. Clair River known as St. Clair Flats.

would have averted much of the distress consequent upon a paralysis of business, which now pervades the country.

Congress, at its last session, passed an act establishing governments for that portion of the territory acquired from France in 1803, which remained unorganized; and in that act was embodied a repeal of the law, generally known as the Missouri compromise, by which slavery was prohibited from that territory forever. This prohibition grew out of the agitation in reference to the admission of Missouri as a slave State, and was supposed to involve concessions from both parties to the controversy. By the terms of the compact then entered into — for such it was, in fact, whatever it might have been in form — Missouri came into the Union with her slavery, and all territory south of the parallel of 36 degrees 30 minutes was left without any restriction as to the character of its institutions; while on the other hand it was solemnly covenanted that all north of that parallel should be forever exempted from the curse of slavery.* The act of Congress embodying this compact, though doubtless subject to the control of the legislative power, carried with it, both in its character and in the circumstances under which it was adopted, a solemn pledge of permanency. It was the result of a conflict between antagonistic interests and principles; and though, in my judgment, the North conceded far too much, I cannot doubt that both sections were influenced by a patriotic desire to preserve the integrity of the Union and the peace of the country.

The compromise was, at the time, eminently satisfactory to the South, as well it might be, for the benefits she was to derive from it were positive and immediate, while those which were to result to the North were remote and contin-

* The Missouri compromise was held unconstitutional in the Dred Scott Case (Scott v. Sandford, 19 How. 393), involving the effect of the removal of a slave into the prohibited territory in 1836.

gent. Still, because it averted seeming dangers, and involved a principle of conciliation that promised to strengthen the bands of the Confederacy, it was acquiesced in by the North; and for more than thirty years had commanded the respect and obedience of all sections and of all parties. Its repeal, therefore, has been very generally, and not unjustly, regarded as a violation of good faith on the part of the South, and a proof that our generous confidence in its chivalrous honor had been misplaced. The gross injustice of the transaction is aggravated by the fact, that the concession to freedom was not withdrawn, until the consideration for which it had been granted had been fully enjoyed. Besides Missouri, Arkansas had been organized out of the territory, and admitted as a slave state into the Union, and slavery had taken possession of the whole of the territory south of the dividing parallel, before the compact was repudiated and the law repealed.

By this act, all the territory of the United States, with the exception of Oregon, is open to the extension of slavery. Against that extension, the State of New York has always protested. In 1820, and in 1850, and whenever the subject has been presented for legislative action, she has asserted the right and the duty of that body which is charged by the Constitution with the responsibility of making "all needful rules and regulations" for the territory of the United States, to prohibit the extension of slavery and the increase of its political power. The Missouri compromise, which allowed its introduction into the territory south of thirty-six degrees thirty minutes, was passed against her convictions of justice and of sound policy; but she has ever remained faithful to its provisions, and hostile to its infringement or repeal. She had a right, therefore, to expect from other States equal fidelity to the compact which it involved; and she has a right, and it is her duty, to demand a restoration of the Missouri line, as

one beyond which slavery shall not be permitted to pass; or rather, as required both by the principle which called our nation into being, and by the law upon which is conditioned its highest development,— the total exclusion of that anomalous institution from all territory under the jurisdiction of the general government. We have no wish, nor do we claim the right, to interfere with slavery in the States; but in no wise do we transcend our prerogative, as a member of the confederacy, when we insist that the federal government shall divest itself of all connection with, and all responsibility for, an institution so repugnant to the general sense of justice, and so hostile to the harmony and ultimate prosperity of the country.

It cannot have escaped the notice of the attentive observer of our governmental policy, that it has, for many years, departed widely from that indicated by the founders of the Republic — viz: the recognition of slavery as an anomalous institution, repugnant to all their cherished ideas of the rights of men, and consequently to be localized, restricted to the narrowest possible limits, and gradually extirpated by the growth of those principles which form the basis of our political edifice. It was an evil day for both North and South when this policy was departed from, and the powers of the General Government were perverted to the extending and nationalizing of slavery; to the upbuilding of an institution purely local in its character, at the expense of the interests of freedom, which should be regarded as dominant and universal. It is a just cause of complaint, on the part of New York, that discriminations should be made, in our National legislation, which tend to embarrass our industrial enterprises, and to deprive us of that relative political influence that of right belongs to us, by concessions to the slave states which neither comity nor sound statesmanship, nor a true regard for the interests of our country as a whole, can for a

moment sanction. Thus have been engendered sectional divisions, and sectional interests have been stimulated into antagonism, and ill-feeling unworthy of our fraternal character engendered; all of which might have been avoided had the Federal Government adhered to its original policy, as good faith and justice to all demanded. However deeply the patriot may deplore the agitations growing out of the slavery question, and the alienation of feeling consequent thereupon, it is in vain to expect that they can be allayed by any legislation that ignores the moral sentiment of our people, and ruptures long existing compacts; or by anything that falls short of restoring our government to its original policy upon that question.

I have no hesitation, therefore, in expressing the belief that the peace and permanent welfare of the whole community, as well as the political rights of this State demand the restoration of that prohibition of slavery in territories which was embodied in the Missouri compromise, and repealed by Congress at the last session; and I recommend to the Legislature the adoption of such measures as may tend most effectually to the promotion of that result, to the protection of the political rights of this State against the further increase of slave representation in either branch of Congress, and to the restoration of that generous confidence and mutual regard which are essential to the stability of that Union, upon which our respectability abroad and our domestic welfare must always largely depend.[17]

There is much, in a review of the interests of our State, to call forth thankfulness for its present and inspire large hopes for its future. Its destinies are, to some extent, committed to our hands. While endeavoring to discharge our respective duties with constant reference to the prosperity of the commonwealth, let us rely for aid upon Him who

[17] See *post*, p. 827, for resolutions protesting against the extension of slavery.

holds in His hands the destinies of nations and individuals, and, seeking His favor and guidance, secure the benediction pronounced upon that people whose God is the Lord.

MYRON H. CLARK.

Albany, January 2, 1855.

SPECIAL MESSAGES.

January 11. To the Assembly: Transmitting resolutions adopted by the Legislature of Rhode Island. The records do not contain the text of the resolutions, but they were probably those adopted in June, 1854, relative to an act of the Legislature of that State passed the preceding January, annulling and reversing a judgment of the supreme court rendered June 25, 1844, convicting Thomas W. Dorr of treason.

January 15. To the Assembly: Transmitting the annual report of the Adjutant General.

January 24. To the Assembly: Transmitting, through the Speaker, a communication and proclamation from his Excellency the Governor of Massachusetts, ceding the district of Boston Corners to the State of New York.

January 26. To the Assembly: Transmitting resolutions adopted by the Legislature of Michigan, recommending legislation by Congress "granting lands to the State of New York or assigns, for the construction of a ship canal around the falls of Niagara."

March 20. To the Legislature:

"The constitution devolves upon me the duty of communicating with you by message, and making such recommendations and suggestions in relation to public affairs, as may seem to me expedient. This duty is ordinarily fulfilled by the executive in his annual message, at the opening of the legislative session; but questions may subsequently arise of so important a character, as not merely to justify, but to demand a special communication. Such a

contingency is presented in the existing condition and prospects of the canal revenues, and the urgent necessity of legislative action, to relieve them from the adverse influences that depress them, and place them upon a more just and satisfactory basis.

There is no interest of the State of greater importance, or which has a more extended influence upon its growth and prosperity, than its works of internal improvement. They are enduring and valuable monuments of the wisdom and foresight of those who projected them, and have, to an incalculable degree, developed the resources, increased the wealth, and contributed to the general prosperity of the commonwealth. It is the duty of this Legislature, therefore, to guard jealously their interests and secure to them that degree of protection which their importance and the vested rights of the State alike demand.

Upon the opening of the Erie canal as a channel of travel and of commerce, and for many years subsequent thereto, its tolls and tonnage were inconsiderable. But its construction secured, for the western portion of the State, ready access to market, the beneficial effects of which were soon manifested in the rapid augmentation of its tonnage and tolls, and the creation, as if by magic, of villages and cities along its line, where before existed an almost unbroken wilderness. With the extension and settlement of the western States, there was a corresponding extension of the area of its business, an increase of its tributaries, and, as a consequence, its revenues rapidly augmented. This expansion of its business and revenues called for an enlargement of its capacity, to enable it to meet the requirements of the future, and reduce the expenses of transportation. The enlargement was commenced, and for a time prosecuted with vigor; but with changes of administration, it was continually affected by changes of policy, disastrous to the prosecution of the work. As a consequence, it has

been left to us in an unfinished state, and much labor is still required to effect its completion. When it had no rivalry in the carrying trade, its revenues increased with a rapidity that exceeded the most sanguine expectations of its friends. But in the midst of this prosperity, burdens of the most onerous character were placed upon it by the constitution, for the purpose of creating sinking funds, for the extinguishment of State debts and the payment of interest thereon, and for support of government. Had its prosperity been unchecked, and the progressively rapid increase of its revenues continued, such charges might have been borne. As it was, however, they absorbed so large a portion of the revenues, as to leave but an inconsiderable amount, if anything, to be appropriated towards the completion of the enlargement. The insufficiency of the provision for this work, resulted in an amendment to the constitution, authorizing loans for the purpose of the enlargement and construction of public works in process of completion.

With that provision, however, additional burthens have been entailed upon the revenues to such an extent, that, as appears by the report of the Auditor of the Canal Department, the sum of three millions four hundred and thirteen thousand one hundred and twenty-one dollars ($3,413,121), will be required the present fiscal year to meet the expenses of collection, superintendence and repairs, the constitutional appropriations for the sinking funds, interest on loans, and the support of government; and that for the next fiscal year, commencing on the first day of October, 1855, three millions eight hundred and eighty-nine thousand two hundred and ninety-one dollars ($3,889,291) will be required for the same purpose. For the fiscal year, commencing the first day of October, 1856, the amount required for repairs, &c., and such constitutional appropriations, will exceed four millions of dollars, ($4,000,000).

Had the revenues of the canals, since the year 1851, exhibited the same ratio of increase as previous thereto, they would have been sufficient to meet such increased burthens; but unfortunately, dating from that period, there has been a diminution of the revenues. This is owing in part, undoubtedly, to the revision of the tolls of 1852, and in a still greater degree to the influence of rival routes and competition in the carrying trade across this State.

In 1851, the laws imposing canal tolls upon railroad tonnage, as well as those prohibiting any roads from carrying freight, were repealed, and at once the door was thrown open, and free competition on the part of railroads with the canals for the carriage of freight invited. This opportunity the railroads have improved with all the skill and assiduity that talent, energy and money could secure. The result is before us. Although the resources of the great West are being developed to a largely increased extent annually; although new avenues and facilities are being opened, increasing the area and amount of business, and of property forwarded by some of those rival routes through our State to the great commercial mart, the revenues of the canals have diminished and are diminishing, while the freight and the receipts from freight by the railroads, are annually, monthly and daily, increasing.

In 1852 the revenues of the canals were.....	$3,179,145
In 1853 the revenues of the canals were.....	3,168,546
In 1854 the revenues of the canals were.....	2,988,665
In relation to the present fiscal year, as appears by the Auditor's report upon the tolls, trade and tonnage of the canals, the tolls collected upon the canals since and including the first day of September last, which form a part of the revenue of the present fiscal year, amounted to the sum of.....	$1,172,088

Estimating the receipts of the remaining months of the present fiscal year at what is supposed to be a large and liberal estimate..	1,500,000
And we have	$2,672,088
as the probable revenue of the current fiscal year to meet the appropriations of.....	3,413,121
Leaving a deficiency of	$741,033

This is the deficiency which you are called upon to provide for the current fiscal year. $200,000 thereof being set apart simply for the support of government might be deducted, which leaves $541,033 to be provided for the purpose of paying the interest and creating the sinking funds required by the constitution. The requirements of the next fiscal year being $3,889,291, exceed those of the present year by $476,170, rendering certain and inevitable a largely increased deficiency, unless supplied by legislative provisions. The same remarks, with still greater force, may be made in reference to the following fiscal year, commencing 1st October, 1856, the requirements of which are estimated at $4,000,000.

It is of vital interest to the credit and reputation of the State that such deficiency should be provided for. The State should not be thrown into the market as a borrower, for the payment of interest, and, therefore, I feel it to be incumbent on you, out of the resources at your command to provide for such deficiency. It is not simply a matter of expediency, but of necessity. The evil evidently is not of a temporary, but under the existing policy, entailed upon us by those who have preceded us in the administration of the government, of a permanent and increasingly embarrassing character; the railroad competition on the one hand, diminishing the revenues by the diversion of trade,

and the constitutional appropriations and demands on the other, increasing the charges and payments to be provided therefrom.

The question which relates to the needed provision for the deficiency in these revenues, involves the consideration of the causes which have created it. From the suggestions already made, it is evident that it is in part attributable to the diversion of freight to railroads; and this is made still more apparent from the facts and statistics put forth in the Auditor's report lately presented upon the tolls, trade and tonnage of the canals. A comparison is made in that report of the business of the State canals and several of the principal railroads for the years 1853 and 1854, and it shows conclusively that the transit of freight is to a very great extent, and much to the injury of the State, diverted from the State canals to the railroad lines. The results are summed up in the report referred to as follows:

'The total movement or tons carried one mile on the canals during the last year decreased 31,730,888 tons, while on the three trunk railroads alone it increased 55,736,450 tons. That the actual tonnage of the canals during that period decreased 61,991 tons, and their revenues decreased $431,152, while the tonnage on those three roads alone increased 316,452 tons, and their revenues from freight alone increased $1,520,688.

'The decrease of tonnage on the canals for that period upon the products of the forest, was	52,780 tons
Upon vegetable food	167,565 tons
And upon merchandise	52,305 tons
There was an increase upon those three roads alone upon the products of the forest of	63,174 tons
Vegetable food	123,436 tons
And merchandise	77,135 tons.'

This diversion existing and rendering taxation necessary, justice and equity would single out the institutions creating and reaping the benefits of diversion as those which should be required to meet the burdens.

The true and only policy then, in my opinion, is the imposition of canal tolls upon the railroad tonnage on all the railroads diverting business from the canals. Such tolls can be so graduated upon the several roads affected as not to be oppressive or unequally burdensome upon any. Provision can also be made for the exemption of such articles as belong legitimately to railroad freight, or as our agricultural or other interests may require, the details of which it is specially your province to arrange.

By maintaining and protecting the revenue of the canals, and providing therefrom as guaranteed by the Constitution for the extinguishment of the debts, their enlargement and completion will be early secured, and the canals then be placed in a situation in which they will be able to protect themselves, when the continuance of such tolls will be no longer needed. [See note 2.]

MYRON H. CLARK."

March 20. To the Legislature: Transmitting resolutions adopted by the Legislature of New Jersey relative to encroachments on the harbor of New York.

March 28. To the Assembly:

Veto of a bill entitled "An act to amend the charter of the New York and Shawangunk Mining Company."

"The bill proposes to continue in force an act of incorporation originally passed in 1814, until the 6th of June, 1876, which incorporation will by limitation expire on the 6th of June, 1856.

Article 8, section 1 of the constitution permits the formation of corporations under general laws, but prohibits their

creation by special act, except in cases where in the judgment of the Legislature the objects of the corporation cannot be attained under general laws.

Under this provision of the constitution the Legislature in 1848, passed a law entitled 'An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes,' under which law every legitimate object of the corporation sought to be extended by this act can be obtained. The extension of the present existing charter is an exercise of the new creating power, and is undoubtedly covered by the constitutional provision.

Another objection to the bill is, that section 2, of article 8 of the constitution, provides that 'dues from corporations shall be secured by such individual liabilities of the corporation and other means as may be prescribed by law.' The requirements of this section are not met by any provision of the bill under consideration."

The bill was not passed over the veto.

April 4. To the Assembly: Transmitting resolutions adopted by the Legislature of Arkansas approving the repeal of the Missouri compromise, and declaring that northern opposition to the repeal "is at war with the letter and spirit of the Constitution, is grossly violative of plighted faith, and is a traitorous blow aimed at the rights of the south and the perpetuity of the union;" condemning the action of Ohio by resolutions, publications and otherwise, tending to interfere with slavery, and urging that the people of Arkansas discontinue all social and commercial relations with the citizens of said State. [See note 17.]

April 7. To the Assembly: Transmitting a remonstrance from the "Chamber of Commerce of the State of New York" against the passage of a bill to incorporate the Hellgate Navigation Company.

April 13. To the Assembly:

Veto of a bill entitled "An act to prevent illegal voting in the city of New York."

"Article 2 of the constitution prescribes the qualifications of voters at elections in this State, and presents the only restrictions upon the exercise of the elective franchise. Any person enjoying the qualifications prescribed in the constitution, is entitled to the exercise of that right, and cannot without an abridgment of such constitutional privileges be deprived thereof. If the power to abridge that right exists at all in the Legislature it must be found in some express provision of the constitution. The Legislative power is the creation of the constitution — created to carry out and protect the rights and privileges guaranteed by the constitution, not to abridge them.

The only provision contained in the constitution vesting power in the Legislature to restrict the right of suffrage, is that contained in section 2 of article 2; and that only authorizes the Legislature to pass laws excluding from the right of suffrage persons convicted of any infamous crime; and for preventing persons interested in any wager upon the result of any election from voting at such election. Section 4 of article 2, authorizes the passage of laws to ascertain by proper proofs the citizens who shall be entitled to the right of suffrage established in such constitution, but does not give any authority to restrict it, or provide any additional requirements for its exercise.

This bill if justified at all is to be sustained by the provisions of section 4; and its intention is to provide for ascertaining, by proper proofs, who is entitled to the right of suffrage. The Legislature, in the exercise of that power, is bound so to exercise it as not to abridge the right of the citizen, or add any additional qualifications to those provided in the constitution. The provisions of the bill in

effect disfranchise all citizens who are able but neglect to attend before the registering officers on the days specified before the election, to have their names registered; and also all those who by absence from their residence and not returning until after the Saturday next previous to election shall not have had their names registered. It makes no provision for supplying such omissions on the day of election; but prohibits all whose names are not registered from voting.

The provisions of the bill are of such a character in relation to the additions to the registry for future elections, as to prevent the registry of any elector's name who shall have neglected to have his name registered at the first registration, unless he shall prove that it arose from inability. Thus a negligence to exercise a right at the time of the first election, is punished by disfranchisement not only at that but future elections.

This bill in section 5, also requires proof of a qualification of six months residence in the county; whereas the constitution requires only four months. It also requires merely a residence of the voter in the election district at the time, while the constitution requires, in addition, that he 'shall have been a resident for thirty days next preceding the election.'*

However important may be the protection of the elective franchise from abuse, and the exercise of the power to ascertain the citizen's right of suffrage by registry or otherwise, it must be done in such manner as not to restrict the exercise of a constitutional right, or prohibit any individual who, by the provisions of the constitution is entitled to vote and who may present himself on the day of election and demand his right as an elector, from exercising the privilege guaranteed to him by the constitution."

The bill was not passed over the veto.

* Const. 1846, art. 2, § 1.

April 14. To the Assembly:

Veto of a bill entitled "An act to enable the Newark and Rosendale Lime and Cement Manufacturing Company to purchase, hold and convey lands and real estate in this State."

"The bill confers upon a foreign corporation organized under the laws of the State of New Jersey, power to purchase, hold and sell real estate within this State, without limitation as to the object for which the real estate shall be purchased or held, or the amount which it may hold. I cannot approve of any law authorizing a corporation, and much less a foreign corporation, to purchase and hold real estate in this State, unless it is forbidden to do so for other objects than those of its corporation, or is restricted in the value of the real estate to be held."

The bill was not passed over the veto.

April 14. The Legislature adjourned without day.

RESOLUTIONS AGAINST EXTENSION OF SLAVERY.

In April, 1855, the Legislature responded to the Governor's recommendation (*ante*, p. 816) by adopting the following concurrent resolutions:

"*Whereas*, The passage of the bill organizing the territory of Kansas and Nebraska, and repealing that portion of the Missouri compromise which prohibited the existence of slavery within their limits, for the purpose of permitting its establishment upon their soil, was a gross violation of good faith, and inflicted grievous wrong upon free labor and free principles throughout the Union; and

Whereas, This act, and the spirit in which it was consummated, demonstrate the determination of the slaveholding interest to use the power of the federal government to promote the indefinite extension and permanent establishment of slavery; and

Whereas, Congress having no power or right to interfere with slavery as it may exist in any state, is expressly com-

manded by the federal constitution to make all needful rules and regulations concerning the territories of the United States;* therefore

Resolved, That the people of the State of New York, represented in Senate and Assembly, demand of congress the enactment of a law declaring that slavery shall not exist except where it is established by the local law of a state, thus restoring, by positive statute, the prohibition of slavery from the territories of Kansas and Nebraska.

Resolved, That the people of the State of New York, represented in Senate and Assembly, will not consent to the admission into the Union of any state that may be formed out of the territories of Kansas and Nebraska, unless its constitution shall prohibit the existence of slavery within its limits.

Whereas, The repeal of the Missouri compromise and the repudiation of a solemn legislative compact, by the slaveholding interest, for the extension of slavery, has released the free states from all obligations that may be expressed or implied in any compromise on the subject of slavery, outside of the federal constitution; therefore be it

Resolved, That while the people of the State of New York, represented in Senate and Assembly, recognize and have always respected the obligation of that prohibitory clause of the constitution of the United States, which declares that 'no person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due;'[b] they regard the law of 1850, which provides for employing the whole power of the federal government in the recapture of fugitive slaves, as a violation of the constitution, an encroachment on the rights of the several states, an outrage upon the principles of justice, and disgraceful to the spirit and civilization of the age in which we live; and that, in their opinion, the welfare of the Union and the principles of republican liberty, demand its repeal.

Whereas, Under republican institutions, the free and open public discussion of all questions which are to be

* U. S. Const. art. 4, § 3, clause 2.

[b] U. S. Const. art. 4, § 2, clause 3.

decided by the popular vote, is imperatively demanded, alike by regard for popular rights and the public good; and

Whereas, The fundamental law of the land secures to, and enjoins upon each and every citizen, the free and independent exercise of the right of suffrage, and has authorized the enactment of penalties against all attempts to interfere with such an exercise of that right by bribes, by menaces, and by undue influences of any sort;* and

Whereas, The history and experience of all free government confirm the solemn warning of Washington's farewell address, that 'all combinations and associations, under whatever plausible character, with the real design to direct, control, counteract or awe, the regular deliberation and action of the constituted authorities, are destructive to the fundamental principles of our government, and of fatal tendency;' therefore,

Resolved, That no countenance or support shall be given to any endeavor to stifle the open discussion of political topics, or to substitute for it the action of societies whose proceedings are not open to public knowledge; and every attempt to control, by the dictation of such secret societies, or by the imposition of oaths or kindred obligations, the political action of any citizen, it is at war with the true theory of our government, destructive of personal independence, hostile to the rights of the great body of the people, and detrimental to the public welfare."

* Const. 1846, art. 2, § 2.

1856. JANUARY 1. LEGISLATURE, SEVENTY-NINTH SESSION.

MYRON H. CLARK, Governor.

The Legislature met on the 1st of January, but in the Assembly there was a controversy over the speakership, and a speaker was not chosen until the 16th. There was also a contest over the election of a clerk, and the organization of the Assembly was not completed until the 18th. The Governor's message was sent to the Senate on the 16th, and to the Assembly on the 19th.

ANNUAL MESSAGE.

TO THE SENATE AND ASSEMBLY:

Fellow Citizens.—In the discharge of the duty imposed on me by the constitution, I submit an account of the financial condition of the State, its various institutions and interests, together with such remarks, suggestions and recommendations as seem to me necessary and appropriate for your consideration.

The total amount charged upon the General Fund revenue, during the fiscal year ending the 30th of September, 1855, was $1,788,636.73. The receipts (exclusive of a temporary loan to the treasury of $187,000) were $1,529,-827.22, showing a deficiency of $258,809.51, to which add that existing at the close of the previous fiscal year $279,-054.38, and there is an actual deficiency in the revenue of the General Fund on the 30th of September, 1855, of $537,-863.89. Through the continued deficiency of the canal revenues, the General Fund has not, during the last fiscal year, received any part of the $200,000 appropriated by the Constitution, out of the surplus revenues of the canals,

to the support of government.[a] The debt of the General Fund at the close of the fiscal year was $6,692,654.37.

The capital of the School Fund was $2,457,520.86, being an increase of $32,308.89 during the year. Its revenue amounted to $143,127.73. The capital of the United States Deposit Fund was $4,014,520.71, its revenue $245,119.09. The capital of the Literature Fund was $268,620.12, its revenue $16,831.26. The amount of the School and Gospel Fund of the Stockbridge Indians was $18,000.

The amounts of the several Sinking Funds on the 30th day of September last for the redemption of the debts created by the loan of the credit of the State to various railroad companies, are as follows: Auburn and Rochester railroad, $91,769.42; the Tonawanda railroad, $33,638.35; the Long Island railroad, $19,209.09; and the Tioga Coal, Iron Mining and Manufacturing Company, $1,460.27; in all, $146,077.13.

The contingent debts of the State on account of the several railroad companies are as follows:

Auburn and Rochester	$200,000.00
Auburn and Syracuse	200,000.00
Tonawanda	100,000.00
Long Island	100,000.00
Schenectady and Troy	100,000.00
Tioga Coal, &c.	70,000.00
	$770,000.00

From the report of the Comptroller which will soon be laid before you, you will not only gather specific details concerning the finances of the State, but also valuable suggestions in relation to their administration.

[a] Const. 1846, art. 7, § 3, am. 1854.

The receipts of the State canals from tolls, rent of surplus waters, and interest on current canal revenues during the past fiscal year, amounted to $2,639,792.12, and the aggregate expenditures for collection, superintendence and repairs, amounted to the sum of $989,792.12, leaving a surplus revenue of $1,650,000, sufficient to meet the requisitions of the constitution for the Canal Debt Sinking Fund of $1,300,000, and the General Fund Debt Sinking Fund of $350,000, but not sufficient to meet any part of the other requirements of the constitution for interest on the late loans for the enlargement, and appropriations towards a Sinking Fund for the extinguishment of the principal of such loans. In anticipation of this deficiency, provision was made for such appropriations, or at least a portion of them, out of the tax to be collected during the current fiscal year. I deemed it my duty at the last session of the Legislature, to call its attention, by special message, to the diminished revenues of the canals, and their insufficiency to meet the constitutional charges upon them. To the recommendations and suggestions of that message I have little to add. The causes which at that time had led to largely diminished receipts in the canal revenues, continued to operate in full force during the greater part of the remainder of that fiscal year. Some of these causes, such as the great scarcity of produce in the west, were of a temporary character.

Abundant harvests and increased productions in the west seeking an eastern market, have already happily influenced the receipts of the current fiscal year, and promise largely to augment its resources. The canal tolls for the navigable season of 1855 amounted to the sum of $2,804,800, being about $31,000 increase on the amount received in 1854. For the four months ending with the month of November, 1855, the excess of canal tolls over those of the corresponding months of 1854 was $186,077.80. It is not

probable, however, that the increased revenues of the current fiscal year will be sufficient to meet the constitutional charges upon them, increased as they have been during the present fiscal year by the additional appropriation of $400,000 required by the constitution to be set apart toward the Sinking Fund for the extinguishment of the canal debt, and also for the additional interest of the loans, taken under the provision of the constitution, for the enlargement and completion of the canals.[b] It will remain for you to provide the means to meet such deficiency. It may be proper to add, that the embarrassment in relation to the deficiency in the revenues of the canals does not arise from any inability on the part of the canals to pay the debt created for their construction, but from the limited period allowed them to do so by the Constitution.

The Constitution limits State loans to eighteen years; and has made appropriations out of the revenues upon that basis only.[c] This limitation is altogether too small, and creates an annual charge upon the revenues beyond the ability of the canals to meet. It appears to me that an extension of the time for the ultimate payment of the debt, and a diminution of the annual charges to correspond with such extension, would greatly relieve the revenues of the canals, lessen the charges and direct taxes upon the people, and enable the canals to do what they are competent to do —take care of themselves and pay all debts incurred in their construction.

An amendment of the constitution to accomplish such a purpose deserves your serious consideration.[1]

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[b] Const. 1846, art. 7, § 3, am. 1854.

[c] Const. 1846, art. 7, § 12.

[1] The Governor's suggestion relative to an extension of the debt period was not immediately adopted, but in 1905 an amendment was approved by the people, taking effect January 1, 1906, extending the period of limitation of state debts from eighteen years to fifty years.

There has been during the last fiscal year a diminution of $248,074.08 in the current expenditures for collection, superintendence and repairs, as compared with the preceding year. This is an improvement in the right direction, and indicates a determination on the part of the disbursing officers to consult a wise economy in the expenditure of the public funds. The contract system for the repairs of the canals has proved so successful that the late Canal Board has wisely, under the direction of the last Legislature, directed and provided for its adoption upon all the completed sections of the enlarged and the lateral canals.

The work of enlarging and completing the canals is progressing with as much rapidity as practicable in view of the amount of the annual appropriations. The work has been let upon terms very advantageous to the State, and there is great cause for congratulation at the prospect of their speedy and economical completion.

The six per cent. loan of $2,250,000 for enlargement purposes, issued during the last fiscal year, was taken at a premium of $365,880.05. The premiums arising from this and the previous loans for the enlargement have been invested, as required by law and the spirit of the Constitution, to accumulate for final appropriation towards the completion of the enlargement, and to supply, in part at least, any deficiency that may exist after the expenditure of the loans provided for in the late amendment of the constitution.[a]

In the month of June a loan for $1,500,000 was issued for the redemption of the canal revenue certificates, and taken at a premium of $259,405. Since the close of the last and during the present fiscal year, a further enlargement loan of $1,250,000 has been issued, at a premium of $204,611.50.

A loan of $4,500,000 issued upon the credit of the Sink-

[a] Const. 1846, art. 7, § 3, am. 1854.

ing Fund, to pay $4,000,000 of State stock falling due on the 1st day of January, 1856, and to meet deficiencies in the Sinking Fund under article 7 of the constitution, has been recently made, at only five per cent. interest, and a considerable premium realized thereon.

The facility with which the preceding loans have been made, and the large premiums received, show not only that the credit of the State is unimpaired, but that the prospect of the early completion of the canals has greatly strengthened it. For details in relation to the finances of the canals, the amount of work constructed thereon, and their present condition, you are particularly referred to the several reports of the Commissioners of the Canal Fund, of the Auditor of the Canal Department, of the State Engineer and Surveyor, and of the Canal Commissioners, which will be submitted at an early day.[2]

There are now in active operation in this State, 3,216 miles of railroads, including double tracks. The whole amount expended in their construction and equipment exceeds one hundred and twenty-five millions of dollars. There have been transported on the several railroads in the State, during the past year, 33,839,164 passengers and 3,417,207 tons of freight. The total cost of operating these roads, was $11,310,071.81, and their earnings amounted to $20,843,385.73.

The large amount of capital invested in these corporations, the immense number of passengers conveyed, and the magnitude of the interests involved, early excited the attention of political economists and legislators. The

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2 Chapter 148, passed April 9, 1856, made provision for canal administration, payments on principal and interest of the canal debt, and also appropriated $2,250,000 for canal enlargement and other improvements. Chapter 149, passed April 9, provided for an extension of the Genesee Valley Canal from the existing terminus in Olean to the Millgrove pond in Allegany River.

necessity of wise laws regulating these interests, and a proper supervision of these great thoroughfares of the people, became a matter of serious consideration.

The Legislature, therefore, at its last session enacted a law creating a board of railroad commissioners, and defining their powers and duties. This board is composed of one person appointed by the Governor and Senate, one elected by the directors of the various railroad corporations, and the State Engineer and Surveyor, who is elected by the people. The board thus appointed insures in its composition the representation of all the railroad interests in the State. Like the banking department, this board is maintained by the different corporations it is appointed to supervise, and does not impose any burdens upon the State.

The annual report of the commissioners will soon be laid before you, containing full details of the business of their department and much valuable information. I trust you will give such consideration to the recommendations and suggestions they will submit, as their importance demands.

For the details of the condition of the banks of the State I refer you to the annual report of the Superintendent of the Banking Department. From this it will appear that during the last fiscal year sixteen banking associations and six individual bankers have commenced business under the provisions of the general banking law, deposited securities and received circulation. Of such associations eight were organized by the shareholders of expiring Safety Fund banks under the provisions of chapter 313 of the Laws of 1849.

During the same period four banking associations, and five individual bankers have given notice of their intention to discontinue business, and have withdrawn a portion of their securities upon the surrender of an equal amount of their circulating notes.

The whole amount of circulating notes issued to banking associations and individual bankers, and outstanding on the 30th of September, 1855, was $24,438,001, for the redemption of which there were then held by the Superintendent, securities as required by law, amounting to the sum of $25,590,848. The amount of unreturned circulating notes, issued to banks incorporated by special acts, and whose charters have not expired, was, on the 30th day of September last, $11,290,235. At the same date the aggregate amount of the outstanding circulation of banks incorporated by special act, whose charters had previously thereto expired was $5,431,386.

On the 30th day of September, 1855, there was a balance of money in the treasury belonging to the Bank Fund of $116,102.84; of contributions due from several expired Safety Fund banks, $9,125.77; and on bonds and mortgages held on account of the fund, the sum of $13,863.32, amounting in all to the sum of $139,091.93, besides the balance of unavailable assets of the City Bank of Buffalo. The total amount of outstanding and unredeemed Bank Fund stock, issued on the credit of the Bank Fund, to meet the liabilities of the fund, on account of the debts of broken Safety Fund banks, was on the 30th of September last $424,961.30; of which amount $83,550 matures and is redeemable on the 1st day of February next, and will be promptly paid out of the cash in the treasury belonging to the fund.

If no failures occur in the existing Safety Fund banks it is anticipated that the fund, with the future contributions to be made to it, will be sufficient to meet all such stock thus charged upon the credit of the fund.

The banks have uniformly preserved their faith to the public, and justly enjoy the increased confidence of the people. The high premiums on the stocks taken as a security for their circulating notes and a rigid scrutiny

into mortgages when taken as a part of such security, serve, in a great measure, to check banking except as a legitimate business. Our banks, with few exceptions, are local institutions, confining their business, as the law contemplates, to their neighborhoods.

I should deprecate any attempt to introduce a more available class of securities as a basis for currency than those now received, fearing that with greater inducements, purely circulating banks would again spring into existence to the detriment of legitimate institutions, and to the peril of our free banking system and the danger of the public interests.

The frequent and sudden expansions and contractions of the currency in the city of New York occasion serious embarrassment and onerous sacrifices. In this manner and in the absence of any adequate monetary necessity, the various business interests of our commercial metropolis are deranged and crippled. This evil is supposed to arise from the employment by banks of large means of most of their capital in "call loans" to brokers and capitalists, upon stock securities. This abstraction of banking facilities from commerce and manufactures, drives the merchant and mechanic into "the street" where they are compelled to pay from one to two per cent a month for money, which the favored borrower obtains "on call," at the rate of six per cent per annum. It is suggested that a law restraining banks from making loans on the hypothecation of stocks beyond a reasonable percentage of their capital, would, by compelling these institutions to resume their legitimate functions, place banking facilities within the reach of industrial and producing classes, and thereby promote the general welfare.

The amount of school moneys apportioned by the Superintendent of Public Instruction for the current year is $1,110,000, of which $800,000 are derived from a general tax,

$165,000 from the income of the United States Deposit Fund, and $145,000 from the income of the Common School Fund.

The amount reported as having been expended for the payment of teachers' wages for the year 1854 was $2,301,411.25; for libraries, $55,216.31; for school house sites, school houses and fuel, $863,990.53; total, $3,220,618.08. The amount of money raised by tax in those districts where free schools are maintained, and the amounts raised by rate bill, are not separately stated, but it is certain that the former considerably preponderate.

The number of school districts reported is 11,748. The number of children of suitable age to draw public money is 1,233,987. There have been 900,532 in attendance upon the district schools; in academies under the supervision of the Regents of the University, 38,734; in colored schools, 5,243, and 53,764 in unincorporated private schools; in all 998,273, leaving 225,854 not in attendance at any place of instruction, if we except the students in the several colleges.

The non-attendance may therefore be set down at one-fifth. It is likely, however, that if the age of six was substituted for four years, as the minimum period, this proportion would be greatly reduced.

The number of volumes in the district libraries is reported at 1,105,370.

The number of school houses is 11,028, of which 9,356 are framed buildings, 715 brick, 576 of stone, and 381 of logs.

Defects in our public school policy, and the legislation necessary to remedy them, will demand your earnest attention. A modification, that shall secure greater economy of the public treasure and an extension of the system to all the children of the State, seems to me obviously necessary. Particular attention should be directed to the academies

now deriving a revenue from the Literature Fund. I would suggest that a board of commissioners be appointed to visit them, examine their management, ascertain to what extent they have complied with the regulations prescribed by the Board of Regents, and report the results of the investigation to the Legislature at its next session.

I cannot regard our school system as complete until it shall extend free academical instruction to every child residing in the State desirous of its benefits.

This can be done by placing all the schools in each town under the control of a board of education, charged with the duty of general superintendence, of selecting suitable text and library books, supplying proper apparatus, grading the schools, and establishing in each town academical departments or high schools whenever a majority of the inhabitants shall deem it proper; or the boards of education in adjacent towns may combine to secure this result, where the territory is limited and the means of a single town are inadequate to the purpose. This policy would remove the objection which is now urged, that the masses have no direct interest in the welfare of institutions imparting academical instruction. The benefit of such instruction would be offered to all the children of the State.

In relation to the subject of supervision, I repeat the suggestions made in my former annual message. The existing method does not answer the purposes for which it was designed. The system of supervision established some fifteen years since, and which causes dissatisfaction in many localities, has been so far modified as to render it powerless to attain its end. In 1847 the Legislature abolished the office of county superintendent, at the instance of many of the boards of supervisors. Of the wisdom of that step there are various opinions. It would, however, be inexpedient to attempt a revival of the office. The like abolition of the office of town superintendent, and the crea-

tion in its stead of boards of education, I doubt not would command the approval of the people, and secure more satisfactory results in general supervision and economical administration. These boards of education should be required to report annually to the supervisors of their respective counties, and also to the Department of Public Instruction, the number and condition of the schools, the number of children residing in the towns, the number actually attending school, the salaries of the teachers, and other expenses incurred in the support of schools.

The present system of making annual reports seems to be very objectionable. The abstracts furnished for years past to the State Department of Public Instruction by the clerks of the several counties, have been incomplete and unreliable. The labor of making these reports, which is imposed upon the county clerk, is foreign to the regular duties of his office, and is often performed in a manner that indicates a great want of interest in it. Under such circumstances it is not possible for the State Superintendent to have correct statistics for the use of the Legislature. As an evidence of the inaccuracy of this information, I will state that the number of school houses in the State returned to the Department of Public Instruction, greatly exceeds the number in the census returns in the office of the Secretary of State; and yet these incorrect returns form the basis upon which the apportionment is made of a third of the public moneys.

I would recommend that all payments from the School Fund, the United States Deposit Fund, the Literature Fund, and the annual State tax for school purposes, amounting in all to about $1,110,000, be placed under the control of commissioners, to be called Commissioners of the School Funds, and to be composed of the State Superintendent of Public Instruction, the Comptroller and the Treasurer — that it be made subject in all cases to their

order, to be paid only on draft by the supervisors or the Regents of the University, with the proper vouchers. This would insure greater safety in the custody and employment of those moneys. Such a modification of the law, therefore, as would place the disbursement of the School Funds in the boards of supervisors, who are the proper custodians of the interests of the people in the towns, seems to me peculiarly desirable.

I would also suggest the expediency of making the schools of the State entirely free. Twice when this question has been submitted to the people, their verdict has been rendered by a large majority in favor of it.

There is evidently a growing repugnance to the rate bill system, and it is now time that the subject of its final abolition was fully discussed. The imposition of an additional tax for the maintenance of public schools for a given time, not less than eight months, to be assessed upon the several towns in conformity with the recommendation of their respective boards of education, would supply all the means requisite for schools during each year. If, instead of school districts as now organized, it should be left discretionary with the educational officers of each town to establish schools whenever necessary in different localities in the town, it would be far easier to disburse the school moneys equitably than under the present arrangement, where districts are formed of different sizes, and with no general regulation as to population or available resources. This policy has been adopted in several States with decided advantage. The interminable controversies between school districts, the adjudication of which occupies so large a proportion of the attention of the State Superintendent, and which seem every year to become more numerous, more bitter, and more mischievous, would be obviated. A more equitable division of the school moneys, greater economy

in their application, and the convenience of the public, would be effected.[3]

It will devolve upon you to consider whether some changes in the instructional arrangements of the State Normal School may not be required. The introduction of a department to impart a knowledge of the principles of agriculture, would do much toward meeting the demand for instruction in that art which is the basis of all wealth and national greatness. Every consideration of policy and economy requires that agriculture should be taught in our public schools. The establishment of a professorship of agriculture in the Normal School seems to me advisable. Its propriety is commended to your consideration.

It may be necessary to inquire whether the objects contemplated in founding that institution are fully carried out in its educational course, and particularly whether the pupils instructed are actually employed as teachers. The number of graduates exceeds eight hundred; and the Legislature ought to be informed how many of these are still engaged in that profession. It has been suggested that the expensiveness of living in a city deters many worthy young persons from entering the school; and that its removal to some other locality where that difficulty will be obviated, would tend to secure the bestowment of the bounty of the State to its legitimate purposes. In Massachusetts, where several normal schools are established and sustained by legislative appropriations, care has been taken to locate them at places where the means of living are not too expensive for the more indigent pupils. Whether any change

[3] Chapter 179, passed April 12, was a general act relating to the supervision of common schools. The act created the office of school commissioner who was to be chosen by assembly districts. The first incumbents were to be appointed by boards of supervisors, and beginning with 1857 the office was to be filled by election by the people. The official term was three years. The act abolished the office of town superintendent of schools. The supervisor was charged with the general duty of disbursing school moneys in his town.

in this respect should be made in our State, I submit to your consideration.

Since the State Library has been under the charge of the Regents of the University, large additions have been made to it, of great value and interest. The number of volumes has been increased from ten thousand to nearly forty thousand. A new catalogue is now in preparation and will be published during the present year.

The usual appropriation is, however, so limited, that after making the necessary purchases for the Law Department, the remainder falls much below the requirements for other objects. I commend this institution to your liberality.

Considerable improvement has been made in the management of the State prisons during the past year. The number of convicts at the close of the year, compared with its beginning, shows a decrease of eighty-nine.

The total number in all the State Prisons on the 30th of November, 1855, was 1905, viz: At Sing Sing, 937; Auburn, 687; and Clinton, 281.

The total expenditures of the three prisons for the year ending November 30, 1855, amount to $233,343.24. The earnings for the same period amount to $198,230.29. The expenditures have decreased $36,305.57, and the earnings have increased $11,959.01, compared with the preceding year.

At Sing Sing the earnings were.....	$90,904.71
do do expenditures were	116,704.81
At Auburn the earnings were.....	74,953.46
do do expenditures were.....	67,786.66
At Clinton the earnings were.....	32,372.18
do do expenditures were.....	48,851,77

In my last message I took pleasure in renewing the recommendation of my predecessor, that a portion of the earnings of the convicts in the State prisons, be laid aside as a

provision for themselves after the expiration of their terms of punishment, or be devoted to the relief of the families of such as had families to support, during their confinement. Subsequent reflection and observation has confirmed my views of the humanity and the policy of that proposed amendment of our penal system. It would improve the discipline of the prisons, stimulate the labor of the convicts, and alleviate their condition upon their restoration to society. That it would be instrumental in removing the inducement to recently discharged convicts to commit crimes against property is apparent. I again urge upon your consideration this measure of humanity, justice and policy.

By the act of 1847 in relation to prisons, the county jails were placed under the supervision of the inspectors, but a subsequent act relieved them of this duty, and the jails are now subject to no uniform system of management or inspection. It is alleged that much of the discipline of our State prisons is made necessary by the evil habits acquired by the convicts while awaiting trial in the county jails. I commend the subject to your action.

The experience of the past year has deepened my conviction of the necessity of some legal provision that shall relieve the Executive of a portion of the burden now devolved upon him by the examination of appeals for pardon or commutation of punishment. These appeals have multiplied to an embarrassing extent, and their proper examination with the facts requisite to an understanding of their merits; and the correspondence and personal interviews, incident to each case, engross almost the entire time and attention of the Executive. I therefore repeat the suggestion contained in my former annual message, that greater discretionary power in the graduation of penalties be given to judges, thus securing a more equitable administration of justice than can be obtained under the present arbitrary

restrictions. Not a few of the appeals now made to Executive clemency are predicated upon the disproportion existing between the actual offence and the penalty — a difficulty which would be in a good degree remedied by the exercise of that judicial discrimination which I have suggested. Relief might also be had by the creation by law of an officer upon whom, in connection with the Executive, should devolve the duty of examining the cases presented for clemency.

The number of boys in the Western House of Refuge at Rochester at the commencement of the last year was 205. The present number is 277. During the summer, the number ranged from 270 to 290. The estimated value of their labor during the year is about $10,000. The new wing, for the erection of which an appropriation was made during the legislative session of 1854, has been completed, furnished, and is now in use. It supplies dormitories for 150 boys in addition to those in the other two wings of the house, a school room with class rooms adjoining, and additional shop room in the basement. The expense of its erection, it is believed, will be covered by the appropriation made for that purpose. The institution now has accommodations for about 375 boys. Its condition and necessities will be more fully explained in the report of the managers, which will be laid before you. It will appear from that, that an appropriation of about $10,000, to supply the deficiency of former appropriations, to meet current expenses, will be required to relieve the institution from embarrassment.

The House of Refuge in New York continues to present its usual satisfactory results. The institution has been now for more than a year in occupation of the new premises erected for it on Randall's Island. The site is a beautiful and healthful one, and the buildings are well adapted to the purpose of their erection. A more thorough system of classification of juvenile offenders has been attempted, but

cannot be accomplished until the completion of the buildings designed for the separate accommodation of girls. During the past year, the foundation of the house intended for females has been laid, and the building for their industrial occupations enclosed. The number of inmates of the refuge, it is estimated, will be five hundred and fifty during the winter. About four hundred of both sexes have been received since the first of January last, and three hundred have been indentured. The institution, as at present arranged, is nearly full; but the withdrawal of the girls, on the completion of the house designed for their accommodation, will afford additional room for at least three hundred. It will then be the largest, and, I trust, one of the best reform schools in the country. During the thirty years of the existence of this institution, about six thousand delinquents have received the benefits of its discipline. At least three-fourths of these, it is believed, have been permanently rescued from a vicious career. No further argument is needed to demonstrate the value of our houses of refuge, and the wisdom of the policy which established and sustains them.

It would be unworthy of a great Commonwealth to neglect to make adequate provision for the care of its insane. New York has heretofore done her duty to humanity in this regard. But her population has increased without an increase of her provision to shelter and subject to discipline and treatment the deranged. One hundred and sixty-seven applications for admission to the Utica Asylum during the last year were made in vain. There was not room to receive them. In order to make places for recent cases, thirty-four inmates of the establishment, during that time, were discharged, not cured and not improved. Nearly one thousand insane persons are now confined in the different county poor houses in our State. In too many of these the afflicted languish wretchedly, without the chance of a cure. In nearly all of them their treatment is simple im-

prisonment. Their helplessness and destructiveness make their confinement in most cases more painful than that of criminals. Generous and creditable as has been the provision made by New York for her insane, it is manifestly inadequate. I earnestly recommend to you to make provision for the construction of a new asylum.

The institution for the instruction of the deaf and dumb, deserves your favorable consideration. The present number of pupils is 289, of whom 218 are beneficiaries of the State. The funds obtained from the sale of the property previously acquired, have been applied to the payment, in part, of the recently purchased premises, and for the construction of suitable buildings. The directors not being able to complete their improvements, an appropriation was made at the last session of the Legislature, upon the condition that no application should be made for further assistance. That appropriation proved to be inadequate. The directors will doubtless be controlled by the restriction which accompanied it, but it is worthy of your serious consideration whether a purely benevolent institution, incorporated and mainly supported by the State, and possessed of valuable property, in the title of which the State holds control, should remain in an embarrassed condition for want of means to accomplish the charitable object for which it was established.

The education of the blind has become a part of the policy of every civilized State. Its institution marked an era in the progress of humanity. New York, for a quarter of a century, has been foremost in the discharge of her duty in this respect. The results of her labors are of the most practical and encouraging kind. One hundred and sixty pupils are now taught in the New York Institution for the Blind. These all receive a sound English education, such as is acquired in our public schools, and are trained in various mechanical arts, to give them the means of support. The more important of these are the manufacture of

carpets, mats, mattresses, baskets, band boxes, plain sewing, and piano tuning. The study and practice of music constitute a large part of the course of instruction.

The graduates of the Institute are found in every part of the State, as mechanics, merchants, musicians, teachers and manufacturers. A number have found a demand for their services in kindred schools springing up in other States, and a few are retained at the Institute to serve as teachers.

During the past year the Institution has been remarkably exempt from sickness, and entirely so from mortality.

The Asylum for Idiots has, during the past year, been removed to the new building erected for its use near the city of Syracuse. This has been completed in general accordance with the plans submitted in the report of the trustees to the last Legislature, and is a commodious structure.

The number of pupils at present enjoying its benefits is 80. Applications for the admission of more are awaiting the action of the trustees, and will be decided so soon as the resources of the institution shall justify it. It appears, by the returns of the late census, that a large number of idiots, of a teachable age, are still unprovided with the means of education. A moderate annual increase, by the Legislature, of the income of the asylum, would enable its trustees to discharge the duties of humanity to these unfortunates.

The want of some responsible general supervision of the various benevolent institutions receiving aid from the State is seriously felt. A bill for this purpose was considered at the last session of the Legislature, but failed to become a law. I commend the subject to your attention.

The number of emigrants landed at the port of New York during the year just closed, is 136,233. During the year 1854 the number was 319,223. This falling off has caused a corresponding reduction in the receipts of the Commission-

ers of Emigration. While, therefore, the Commissioners were burdened with the support of the sick and destitute arriving the preceding year, their diminished revenues during the last season has occasioned serious embarrassments. The length and severity of the winter of 1855, and the high prices paid for all the necessaries of life, not only increased the number of emigrants requiring aid, but added largely to the expenses of the Commissioners.

The Commissioners within the past year have entered vigorously upon a system of economy and retrenchment. The inmates of their various institutions were largely reduced in numbers. The medical department was reorganized and further improvements are contemplated. The general superintendence was changed, and all supernumeraries were discharged. In these efficient reforms, as in their generous devotion to the laborious duties of their office, the Commissioners of Emigration earn their only reward — the approbation of their fellow citizens.

The indebtedness of the Commissioners, from the causes stated, will probably require legislative relief. It should be remembered that the money to purchase the land on Ward's and Randall's Islands, to erect thereon expensive and noble structures, to maintain the inmates, and to return to the counties the sums expended for the support of emigrants, has all been derived from the emigrants themselves. Since the passage of the law creating the board of commissioners, our own citizens have been relieved from the burden of supporting sick and destitute emigrants. You will, I trust, be prepared to consider favorably such application as may be made for the temporary pecuniary relief of the board of emigrant commissioners.

Foreign emigration is an element of national prosperity, the importance of which we are not likely to over-estimate. The strangers come to us rich in what we most need, the ability and the disposition to labor. Their labor enters immediately into every department and branch of our in-

dustry. From England and France come artizans whose skill and experience enable us to compete successfully with the manufactories and workshops of the Old World. Northern Europe supplies us with thrifty and industrious tillers of the soil. Ireland sends us laborers, without whose bone and sinew our country would not now rejoice as it does in more canal navigation and more miles of railroad than have been constructed by any other nation. To emigration we are largely indebted for the early settlement, the rapid development, and the rising greatness of the Western States. If our citizens realized how directly their own individual prosperity springs from the manual labor of emigrants, or even reflected how indispensable are their services to our domestice comfort, they would be less solicitous to 'pass laws to prevent the population of these States; to obstruct the laws for the naturalization of foreigners and to refuse to pass others to encourage their migration hither.'

In pursuance of a law of the last Legislature, the Commissioners designated Castle Garden for the landing depot of all emigrants arriving at the port of New York. Though encountering persevering opposition from classes of persons interested, for a series of years, in extortions and frauds alike oppressive and unjust to emigrants and discreditable to our State, the Commissioners, sustained by the city authorities and the courts are now working out, with eminent success, the beneficent objects contemplated. The garden affords ample, commodious and grateful shelter and protection to the tens of thousands of strangers heretofore cast upon the open wharves to be preyed upon by rapacious runners, bookers, and others, who were the more successful by reason of speaking the languages and claiming to be the countrymen and friends of the emigrants.

The different railroad and steamboat companies supply tickets to emigrants, within the garden, at their regular and published rates of fare. Information required either

to guide or facilitate their course, or promote their interests, is furnished by the Commissioners or their employees. Such as are disappointed either in meeting friends or remittances, on their arrival, find a temporary home in the garden, or are assisted to their destination. The favorable location and peculiar advantages of Castle Garden have fortunately enabled the Commissioners to perfect their arrangements for the protection of emigrants. Its designation is justly regarded as a wise and enlarged measure of economy and humanity.

The prevalence of a fearful epidemic during the past summer and autumn, in the cities of Portsmouth and Norfolk, in Virginia, filled the public mind with sadness, and excited serious apprehensions that, in its progress, the scourge might reach our own commercial emporium. Happily, these apprehensions were not realized; yet the opinion has been expressed by eminent medical authority that, with the approach of another summer, that disease will reappear in more northern latitudes. Whatever value may be attached to this opinion, all will concur in the importance of vigilantly guarding the public health. If the authorities are not already clothed with powers adequate to this end, ample ones should be conferred. The public health should be subsidiary to no other interest, for on that all others are ultimately dependent. "The pecuniary loss sustained in a hundred years by quarantine restrictions upon commerce, could not equal the ruin and desolations of a single year of pestilence."

The expenses imposed upon commerce by a strict enforcement of our quarantine laws, are greatly enhanced by the dilapidated condition of the structures erected by the federal government upon the quarantine grounds.

These structures must be thoroughly repaired before they will be suitable for the storage of infected cargoes while under quarantine. The administration of the revenue laws of Congress, so as not to interfere with our

quarantine regulations, cannot be secured unless these repairs are made. I therefore submit to your consideration the propriety of instructing our Senators, and requesting our Representatives in Congress, to procure an appropriation for this purpose.[4]

The Legislature of 1853 granted a charter for an Agricultural College to be connected with an experimental farm. Applications will be made to you to aid the endowment of this institution with money from the public treasury. The great value to a State of intelligent agriculture, and the importance of improving our knowledge and practice of this most dignified art, with the aids of modern science applicable to it, induce me to recommend you to grant that application, and with liberal measure. The diminution of the cost of raising the food of the people of this State, and the increase of the productiveness of its farms, are considerations upon which it is not necessary to dwell. Economical farming in New York seems to require governmental aid in making a knowledge of chemistry, as applied to agriculture, cheaply accessible to all who till the soil. Arbitrary governments in Europe have by public instruction popularized this knowledge. Republican New York surely can afford to do so.[5]

The salt manufacture at Syracuse during the past year has been prosperous. The number of bushels inspected amounts to six millions, which is an increase of two hundred and fifty thousand bushels over the year 1854. New works are being added at the salines to meet the increasing demand for both coarse and fine salt, and it is confidently anticipated that the product of the coming year will reach nearly seven millions of bushels. The revenue which arises

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[4] See special message of April 5. Rigid quarantine regulations were contained in chapter 147, passed April 9.

[5] Chapter 67, passed March 31, authorized the comptroller to loan to the trustees of the State Agricultural College $40,000 from the income of the United States Deposit Fund, to be used for the purchase of land and the erection of buildings.

from the moderate duty of one cent per bushel on this amount, will be amply sufficient to support and extend the works belonging to the State at these springs.

The reports of the Adjutant General and Inspector General show a gratifying improvement in the spirit and discipline of the uniformed militia of the State. The law of 1847 has fully accomplished its objects of securing to the State the services of a small but effective military force, and relieving the great body of those liable to military duty from an indirect tax, which was the more burdensome because productive of no useful results.

I recommend, with the concurrence of the above named officers and the Commissary General, the sale of the New York arsenal, and the adjacent land belonging to the State. This property is situated between the Fifth and Sixth avenues, in the city of New York, and embraces about ten acres, on which also is located a powder magazine. They form part of the new Central Park, and the sale will probably be required to enable the citizens of New York to derive the advantages from the Park they are entitled to expect. The continuance of the arsenal there, and particularly the powder magazine, will stand in the way of necessary improvements. The Commissary General estimates that more than a quarter of a million of dollars would be realized from the sale, which sum it is proposed to appropriate in part to the erection of an armory in the city of New York, the purchase of the United States arsenal at Rome, the erection of an arsenal at Buffalo, and the improvement of the one at Albany, leaving, after such expenditure, about one hundred thousand dollars to be paid into the treasury. The arms in the possession of the 1st division will always be amply sufficient for the ordinary use and defence of the city of New York, and the location of the balance of the State arms at Albany, Rome, and Buffalo, will lessen the expense of distribution, and also the time required therefor. It is, moreover, advisable that

the Commissary General's office should be at Albany, now that all the arms and equipments used by the militia are owned and distributed by the State.

The criminal laws of our State need amendments and additions to suppress old abuses and meet new offences. The extension of the principle of association has led to frequent frauds in the organization of corporations. These offences should be summarily dealt with, particularly those of fraudulent companies to insure against loss by fire. They inflict widespread injury. New safeguards seem to be needed for the faithful administration of corporate trusts. Criminal pleadings could be simplified with great advantage to justice. The mischievous distinction between grand and petit larceny might profitably be abolished, and punishments for theft be graduated in all cases to the criminality of the offender. The right of peremptory challenge accorded to the prisoner on trial has been enlarged by construction to a hurtful limit. The people are without protection, by the right of challenge, against the introduction of the friends of criminals upon petit juries. An increasing inconvenience is experienced from the working of the rule which practically excludes from the panel to try for a crime, all persons who have read newspaper accounts of it. The laws regulating grand juries might be amended with advantage. In many cases their action, through the malice and falsehood of informers, is unjust and aggressive. The evidence upon which bills of indictment are found is frequently insufficient. A great injury is done to good government by the delay in bringing criminals to trial, and the facility with which the postponement of criminal causes is effected. The evils I have summarily referred to, are worthy of the careful attention of the Legislature.

In the present constitution of our courts of law, the poor man is often practically debarred a hearing of his just claims, from his inability to pay the charges incident to

their prosecution. As a remedy for this evil, I would suggest the establishment, in all of our cities, of courts of limited jurisdiction, to take cognizance of claims, ranging from one dollar to ten dollars; and, by the simplest and most economical processes, to hear and adjudicate the same, without charge to the parties.

With the increase of population and business in our State has come an increase of litigation. Although the judicial force was largely augmented by the new constitution, the courts, especially those in the commercial districts of the State, are burdened with accumulations of business which no amount of labor can dispatch. The creation of local tribunals in large cities has afforded some relief.

While the evil is acknowledged, the obvious remedy, and one which the constitution wisely contemplates, has not yet found favor with the Legislature. That is the establishment of courts of conciliation.[e] The experience of other countries furnishes evidence of the beneficent workings of these tribuanls. Through their instrumentality much hasty and needless litigation is arrested. Misapprehension of rights, and the conflict of interests among neighbors, by conciliating intervention, are amicably adjusted. Here, where courts are more resorted to than in any other country in the world, it is believed that the tribunals of conciliation would accomplish the reform so generally, and yet, hitherto, so unavailingly sought. I respectfully solicit your attention to the subject of their establishment.[6]

The returns of the census show the following general results:

Total population of the State, 3,470,063; showing an increase since 1850 of 372,024; since 1845, 864,923.

Native voters, 516,745; naturalized voters, 135,076. Aliens, 632,746; colored persons not taxed, 35,956; Indians, 3,945.

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[e] Const. 1846, art. 6, § 23.

[6] See 1849, note 19, as to courts of conciliation, *ante*, p. 444.

A report will be submitted to the Legislature, by the Secretary of State, embracing the details of the census necessary for the reorganization of the senate districts, and the new apportionment of the assembly, required by the third article of the constitution.[f] The sixth article of that instrument also confers upon the present Legislature the discretion and authority to reorganize the judicial districts.[g] In view of what I have elsewhere stated in relation to the accumulation of business in our courts, I recommend the creation of an additional judicial district of the supreme court.[7] The recent enumeration shows that the city of New York will be entitled to two additional justices of the supreme court. I recommend a law authorizing their election.

The Stockbridge tribe of Indians claims title to large tracts of land in several counties of our State. Suits have been brought to recover possession of some of these. Our government has always recognized the original title of the aborigines to the soil. In 1853 the Attorney General in a report made to the Assembly said: "It appears that the title of this tribe (the Stockbridge) to large tracts of land has never been extinguished." Justice alike to the red man and to the present occupants or claimants of these lands demands the speedy settlement of the question. I therefore deem it my duty to direct your attention to the subject and to suggest the adoption of measures to bring the controversy to an early and equitable adjustment.

The commissioners appointed under the act of the last Legislature, to prevent further encroachments upon the harbor of New York, organized promptly, and have been diligently prosecuting their surveys, soundings and ob-

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f Const. 1846, art. 3, §§ 4, 5.

g Const. 1846, art. 6, § 16.

7 Another judicial district, the 9th, was created in 1906 (chapter 294) under the authority conferred by the amendment of section one of article six approved in 1905.

servations. An application made by the commissioners, through the Secretary of State, to the President, for the services of experienced United States civil engineers, was met in a spirit which evinced, on the part of the federal government, a just appreciation of the importance of the harbor of New York, to the commerce of the Union and of the world. Distinguished officers, with the advantage of large experience in coast surveys, were immediately detailed for this duty. With the harbor commissioners they have been efficiently employed during the season. The results, though necessarily incomplete, will be submitted in a report to the Legislature.

It is deeply to be regretted that this subject had not attracted the attention of the Legislature at an earlier day, and before the channels of the two noble rivers that form the harbor whose tonnage exceeds that of any other port in the world, had been seriously narrowed by encroachments. Much, however, is now being done for the protection of the rapidly increasing commerce of the port of New York.

The law authorizing the appointment of harbor commissioners, while it defined their duties and fixed their compensation, by inadvertence, made no appropriation for their payment. This, while the commissioners have practised the most rigid economy in their expenditures, has occasioned inconvenience. I therefore ask the earliest attention of the Legislature to this defect in the law, that the commission may receive what is already due, and be enabled to prosecute its duties to a conclusion.[8]

The act for the suppression of intemperance, pauperism and crime, passed by the last Legislature, in accordance with the clearly expressed demand of the people, went into operation on the fourth of July last. Notwithstanding it has been subjected to an opposition more persistent, un-

[8] Chapter 89, passed April 1, 1856, appropriated $29,000 for the expenses of the harbor commissioners appointed under the act of 1855.

scrupulous and defiant, than is often incurred by an act of legislation; and though legal and magisterial influence, often acting unofficially and extra-judicially, have combined to render it inoperative, to forestall the decision of the courts, wrest the statute from its obvious meaning, and create a general distrust in, if not a hostility to, all legislative restrictions of the traffic of intoxicating liquors, it has still, outside of our large cities, been generally obeyed. The influence is visible in a marked diminution of the evils which it sought to remedy. In the city of New York, and others of our large towns, it has, through the connivance of magistrates, and executive officers, sworn to sustain the laws, been flagrantly disregarded, on the pretence principally of its unconstitutionality. The course pursued has indicated but little confidence on the part of those opposed to the law in the ultimate decision of the court, and still less, of a willingness to let the statute be tested by actual experiment. That some of the details of the prohibitory act are imperfect, and that some of its provisions are susceptible of a lax interpretation, is not to be denied. These defects do not, however, vitiate the main principle of the law, which seems to me to be entirely accordant with our constitution, and in harmony with the obligation which government owes to the people. My confidence in the power and duty of the Legislature to prohibit the traffic in intoxicating liquors, and in the good results which may be anticipated from such prohibition, is in no degree shaken.

But no further action on the subject is recommended, until the constitutional questions involved in the existing law shall have been adjudicated by the court of appeals.[9]

What amendments, if any, may be needed to render the statute more effective for the suppression of "intemperance, pauperism and crime," and to guard against the neglect or malfeasance of those to whom its execution is

[9] See 1855, note 11, *ante*, p. 802. The prohibitory act of 1855, chapter 231, was held unconstitutional in Wynehamer v. People, 13 N. Y. 378.

entrusted, may be matters for your subsequent consideration.

In pursuance of a resolution of the last Legislature, I appointed two associate counsel, to act with the Attorney General, in the suit pending in the supreme court, between this State and the State of Virginia, known as "The Lemmon Slave Case." The case has been prepared and is noticed for the February term of the court, when it is expected it will be argued. As there is no provision made to meet the expenses on the part of this State, it will devolve upon you to make the necessary appropriation.[10]

The people of our State have observed with painful interest the course of events resulting from the passage of the act of Congress, organizing the territories of Kansas and Nebraska. Those territories comprise a very large portion of the region expressly shielded from slavery by the compromise of 1820. By virtue of that compact a most reluctant and partial consent was wrung from the representatives of the people of the Free States to the admission of Missouri into the Union as a slave State. That act so prejudicial to the fame and prosperity of the American people, and even of Missouri herself, was slowly and grudgingly acquiesced in by the North, under the conviction that the evil it involved was instant and irreparable, while the good it stipulated would be greater and more permanent, becoming more and more positive and obvious in coming years. But at the expiration of thirty years, after a large and valuable strip of country had been transferred quietly, if not clandestinely, from free soil to slaveholding Missouri, the favorable occasion presented by an unprecedented triumph of the slaveholding interest, was seized to press the repeal of the Missouri restriction, and consequently to open Kansas and Nebraska to slavery. No Congress that ever yet assembled, except that just dismissed

[10] See 1855, note 15, for a report of the Lemmon case, *ante*, p. 811.

and rebuked by the people of the free States, could have been induced to sanction this repeal; and it is believed that no other federal administration, but that now going out of power, could have been impelled to urge it. The opportunity was improved with desperate assiduity and energy, and the effort was too successful. All legal barriers to the establishment of slavery in Kansas and Nebraska were removed by Congress; removed, too, by the aid of votes from this and other non-slaveholding States. The assumption of unconstitutionality, which every earnest effort to restrain any great moral and social evil seems fated to encounter, was invoked to excuse the repudiation of a solemn contract by those who had secured all its advantages. And thus the Missouri Compromise, so long the theme of general and extravagant eulogium, was overthrown by the very interest which had proposed and constrained its adoption.

The consequences of this act of perfidy have thus far fully justified the apprehensions and fulfilled the predictions of the champions of freedom and public faith.

Nebraska, entrenched behind free States only, will probably be permitted to add another to their number without a serious contest. But Kansas, on the other hand, bordering on a populous portion of Missouri, fanatical in its devotion to slavery, and through which nearly all emigrants enter the new Territory, has, in some respects, become a subjugated province of that State. By Missourians its delegates to Congress have been chosen, and the semblance of its Legislature organized. That Legislature has appointed its county officers for a term of six years; and the same authority assumed to establish slavery on its soil; and to fortify it by most extraordinary inhibitions and penalties. And when its federal Governor called for military force to uphold these outrageous enactments, his orders were responded to, not by the inhabitants of Kansas, but by armed bands from Missouri. The sympathies of the North and West have been keenly alive to the menaced sub-

jection by the rifle and the knife of the free soil citizens of the Territory gathered at Lawrence. Their calm courage and determined attitude rolled back this first demonstration of slavery to conquer freedom by force of arms. They are entitled to the respect and gratitude of all who love the republic.[11]

The voice of New York has repeatedly been heard in the assertion of the Jeffersonian policy of restricting slavery and extending freedom. I trust that it will be uttered again with an unanimity and an emphasis worthy of her history, her principles and her convictions.

Republican government, popular education and industry, guided and assisted by the wisdom and goodness which watch over the affairs of the Universe, have exceedingly prospered the people of New York during the last year. The conditions of the continuance of the Divine favor are, just legislation, wise public economy, and the recognition by the State of the equality and fraternity of its citizens, and of the republican destiny of the confederacy. Let us address ourselves to the discharge of the duties we owe to the commonwealth whose servants we are, in a spirit of humble dependence upon the Great Law giver, and of fidelity to our responsible trusts.

MYRON H. CLARK.

Albany, January 16, 1856.

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11 See special message of February 9, for a communication from the Governor of Kansas.

SPECIAL MESSAGES.

January 29. To the Senate:

"EXECUTIVE DEPARTMENT,
ALBANY, *January* 25, 1856.

"I herewith transmit to the Legislature certain resolutions passed by the General Assembly of the State of Connecticut, appointing commissioners to fix the west boundary line of that State.

These resolutions, it will be observed, contemplate the appointment of similar commissioners on the part of our own State, to confer with those named in the first resolution, as appointed by the State of Connecticut.

I deem the matter of sufficient importance to be laid before you, and would respectfully recommend that commissioners be accordingly appointed, on the part of the State of New York.[12]

MYRON H. CLARK."

February 9. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *Feb.* 9, 1856.

"I take the earliest opportunity to submit to the Legislature, the accompanying communication from the Governor-elect of Kansas territory; my views, on this subject, having been fully expressed in my annual message, it is unnecessary, at this time, for me to add anything further. Its importance is manifest, and will, I am confident, commend it to your prompt attention.

MYRON H. CLARK."

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[12] The Legislature adopted a concurrent resolution on the 5th of April, recommending the appointment of three commissioners by the Governor to act with the Commissioners appointed for Connecticut to establish the boundary line between the two States.

The following is the letter referred to in the Governor's message:

LAWRENCE CITY, K. T., *January* 21, 1856.

To his Excellency, Governor of New York:

SIR.— We have authentic information that an overwhelming force of the citizens of Missouri are organizing upon our borders, amply supplied with artillery, for the avowed purpose of invading our territory, demolishing our towns, and butchering our free State citizens.

We hope to be able to hold out until assistance can reach us. We respectfully request, on behalf of the citizens of Kansas, that such steps may be taken by the people of the States, as humanity suggests to prevent the successful carrying out of so inhuman an outrage.

Respectfully,

J. H. LANE,
Chairman, Ex. Com. K. T.
C. ROBINSON,
Gov. elect of Kansas.
GEORGE W. DEITZLER,
Secretary.

March 3. To the Assembly: Transmitting resolutions adopted by the Legislature of Alabama. The journal does not contain the text of the resolutions, nor indicate the subject of them, but they were apparently the resolutions adopted by the Legislature of Alabama in February, 1856, recommending federal legislation suspending tariff duties on railroad bars for a few years. The preamble recited the great increase in railroad building, and stated that not more than twenty-five per cent. of the rails used were manufactured in this country, which necessitated a resort to foreign manufactures. It was urged that unless aid in some such form could be granted, railroad building would

cease or be materially diminished to the great detriment of the commercial development of the country.

March 4. To the Senate: Transmitting the report of Alexander Vattemare, one of the Commissioners of the State of New York to attend the universal exhibition held in Paris in 1855.

March 7. To the Senate: Transmitting resolutions adopted by the Legislature of Rhode Island, relative to the French spoliation claims. The resolutions were referred to a committee on commerce and navigation which presented a report embodying resolutions which were adopted, urging Congress to take immediate action to settle the claims, which it was alleged had been assumed by the federal government in its negotiations with France.

March 7. To the Assembly: Transmitting resolutions received from the Governor of Vermont, apparently those adopted by the Legislature of that State in November, 1855, demanding immediate repeal of the fugitive slave law, protesting against the territorial code enacted by Congress for Kansas and Nebraska which permitted slavery in those territories, declaring that "the armed and unlawful invasion of Kansas by citizens of Missouri, and their illegal and forcible exclusion of the people of that territory from all the political rights to which they were entitled in the government thereof, for the sole purpose of establishing slavery therein, under the semblance of law, was an act of atrocity unequaled in the political history of this Nation," promising the aid of Vermont "to uphold and sustain the people of the territories in their lawful effort to exclude slavery therefrom," and that the State would oppose the extension of slavery into, and the existence thereof in the territories of the United States, and the admission into the Union of any State whose Constitution does not perpetually prohibit slavery therein."

March 27. To the Assembly: Transmitting resolutions adopted by the Legislature of New Jersey relative to the construction of a break water at Cape May.

April 5. To the Senate:

"EXECUTIVE DEPARTMENT,
ALBANY, *April* 4, 1856.

"In my annual message to the Legislature I called attention to the dilapidated condition of the buildings at the Quarantine.

A joint resolution has been passed by the Legislature requesting action in the matter by the proper authorities of the National Government.

A communication has been received from the committee on commerce in the Senate of the United States, and also from the Secretary of Treasury of the United States, adverse to the request.

The whole subject is therefore again submitted to your consideration. [See note 4.]

MYRON H. CLARK."

April 7 and 8. To the Senate and Assembly respectively:

"EXECUTIVE DEPARTMENT,
ALBANY, *April* 7, 1856.

"My attention has been specially called to the present state of the affairs of the Commissioners of Emigration, by a communication received this day, and which is herewith transmitted to you.

The annual report of those officers and the special reports of legislative committees in former years, and during the present session, show that under the operation of the system administered by the Commissioners, a fund has been annually raised from the emigration itself, which has relieved the cities and counties of the State from a direct burden of taxation, which they would otherwise have had to bear, for the support of the alien poor, of nearly five

millions of dollars, since 1847; whilst that sum has not only afforded efficient relief to the diseased and destitute, who had contributed to it, but also supplied, through the aid and information afforded by those who administered it, the means of self support and employment to the healthy but friendless and uninformed strangers.

The same sum has mainly supported, during the last eight years, the Quarantine and Marine Hospitals, at Staten Island, in the most efficient and satisfactory manner, effecting under Providence the exclusion of pestilence and all its attendant evils, which affect directly or indirectly the health or the interests of every portion of the State.

The sudden and unexpected reduction since Jan. 1855, of the income of the Commissioners to less than half of its usual amount, while the demand on the fund during the last year was larger than usual, with other circumstances, the details of which are set forth in the official communications of the Commissioners to the Legislature, has placed them in such a state that without pecuniary aid from the State, the present system must be suspended or even abandoned.

The estimated amount required, I understand to be two hundred thousand dollars.

That after eight years of effective operation in the relief and aid of thousands in each year, and an expenditure of from four to five millions of dollars for public uses, without any charge to the public itself, some deficiency should exist under circumstances which could not reasonably be anticipated, and that to an amount of less than five per cent on the aggregate expenditure, at a time when the cost of maintenance of the poor has largely increased in every city and county, and in some places more than doubled in proportion to the population, should not be a subject of surprise or censure.

Even if such surprise or censure should be expressed,

the Commissioners have anticipated a conclusive answer by showing that they have expended in land and hospital and refuge buildings, now held by them in trust for the State, an amount more than equal to their debts and of much greater value in money for any public sanitary or charitable purposes.

According to the estimate of the Commissioners, supported by the experiences of the last six months, their establishments on their present footing, and now fully provided with buildings and all the appendages needed for hospitals, houses of refuge could be carried on efficiently, with the probable income of a diminished emigration accompanied with diminished claims upon it, if they were now supplied with the means of meeting immediate and pressing demands.

Under these views I cannot conceive of any more serious evil to the State of such a kind, than might rise from breaking up or even suspension of this useful and beneficent system. Even in the view of economy, the abandonment of a system so economically producing such results, by withholding a present outlay would seem to be a most unwise expedient; without such aid the large and excellent hospital establishments on Ward's Island might be sacrificed by a legal sale, in which the valuable buildings would add nothing to the price for ordinary purposes.

The support of the Quarantine and the Marine Hospitals, for patients afflicted with malignant and pestilential diseases would be precarious, and often limited in efficiency perhaps in seasons of epidemic diseases, to a degree dangerous or fatal to the public health.

At the same time a great number of those who have within the last five years paid commutation money on the pledge of the State for their relief, whenever they should unhappily become a public charge, would be thrown on the cities, counties and towns. The expenses thus incurred would unquestionably be a great charge against the State,

which must ultimately be paid from its treasury, though advanced from local taxation at first.

If any of the evils above enumerated should occur but in part, it seems to be obvious that the obviating them by an advance asked for by the commissioners, which is small in comparison to the objects in view, is a measure alike of justice and humanity.

M. H. CLARK."

April 9. The Legislature adjourned without day.

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